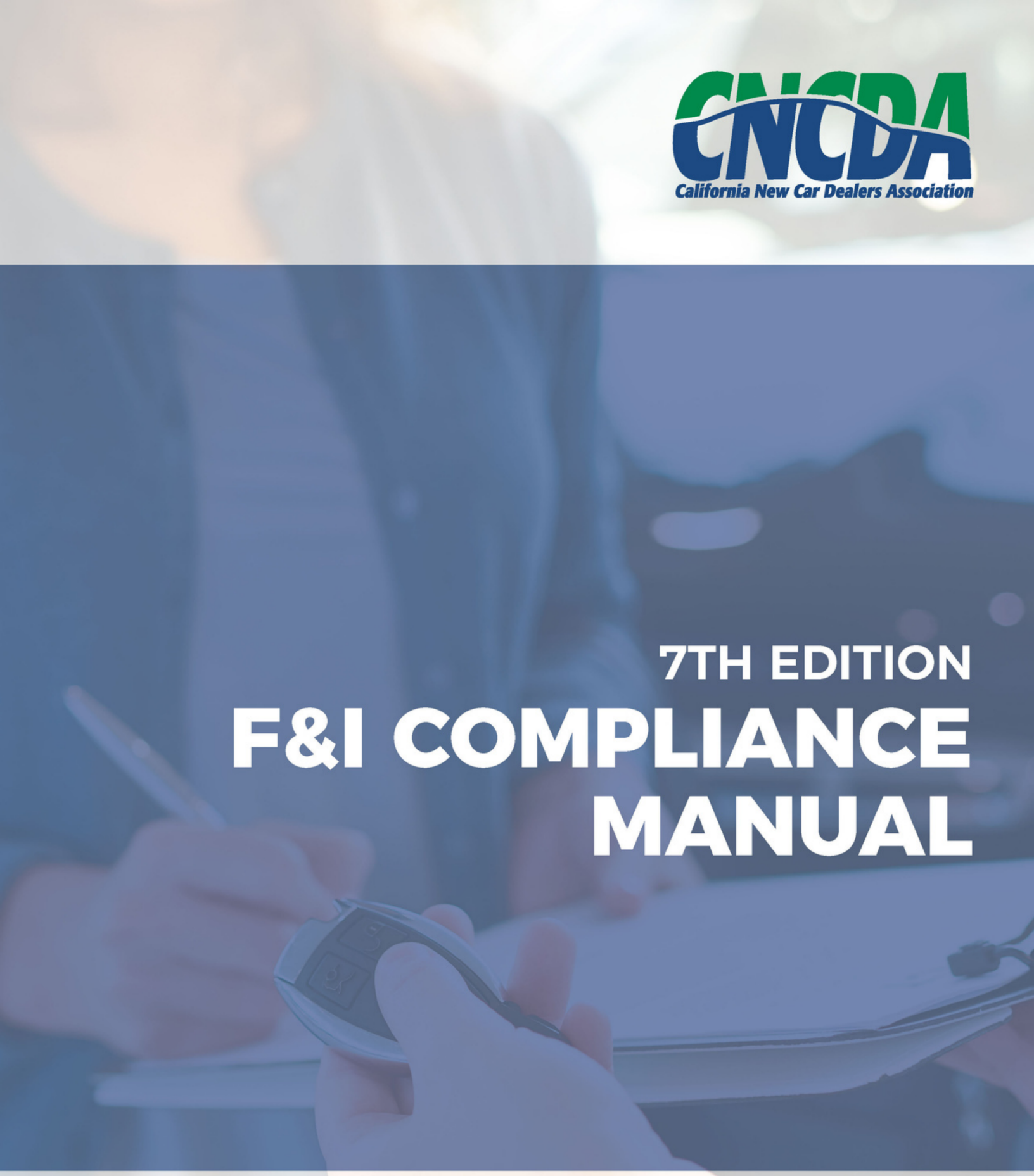
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7TH EDITION

F&I COMPLIANCE MANUAL

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F&I COMPLIANCE MANUAL

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Purpose of Manual. This California Auto Dealer Finance and Insurance Compliance Manual has been authored by Manning, Leaver, Bruder & Berberich, Attorneys, Los Angeles, California, for the use by the California New Car Dealers Association and its Members. Its purpose is to assist California vehicle dealers with legal compliance in dealership finance and insurance (F&I) areas. Note that the focus of the Manual is on transactions involving the sale or lease of vehicles to consumers, rather than transactions involving the sale or lease of commercial vehicles, as such consumer transactions present more challenges in terms of legal compliance because of the extensive array of statutes and regulations that apply. Dealers engaged only in commercial vehicle transactions should consult with counsel regarding their more limited legal compliance responsibilities.

Not Legal Advice. This publication is not intended, nor should it be received, as legal advice or a substitute for legal advice. It is intended as a source of guidance to California vehicle dealers and as an aid in recognizing and dealing with legal issues. The law is subject to constant change and there may have been developments since this publication was last published or revised (April 2023). This publication should not under any circumstances be considered as a substitute for consultation with your attorney. Neither the authors nor California New Car Dealers Association make any express or implied warranty with regard to the use of this publication. The reader and his or her attorney must depend upon their own knowledge of the law and expertise in the use of this publication.

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Table of Contents. Use the Table of Contents at the beginning of the Manual to find a particular section of the Manual.

Glossary. Throughout this Manual you will see some abbreviations and acronyms which refer to various statutes, regulations, and other words commonly used in F&I departments. For example, the California Automobile Sales Finance Act is described as ASFA. This Manual has a glossary, which describe these abbreviations and acronyms.

Text of Statutes and Regulations. The Manual sometimes refers to various California and federal statutes and regulations by their title and section numbers. You can read the full text of the statutes and regulations on various Web sites as follows:

California Statutes: An example of a reference to a California statute would be California Civil Code § 2982. Go to www.leginfo.legislature.ca.gov. Click on the "California Law" tab. Then either use the drop-down option to the right to select the code and enter the section number or click the code and navigate to the applicable part and chapter. You may also search by keywords under the "Text Search" section.

California Regulations: An example of a reference to a California regulation would be: 13 CCR § 272.00. Go to http://government.westlaw.com. Select California Code of Regulations. Click on the "Search" button' then enter the title of the Code and the section number. In the example, the title is 13 and the section number is 272.00. Then click on the number in front of the code section to see the text of the code section.

Federal Statutes: An example of a reference to a federal statute would be 15 U.S.C. § 6809. Go to http://www.findlaw.com/casecode/uscodes/. Enter the title of the Code and section number; then click "Search." In the example, the title is 15 and the section number is 6809. To see the Code section that follows, click the "Next" button on the bottom of the page.

Federal Regulations: An example of a reference to a federal regulation would be: 16 CFR § 682.1. Go to www.findlaw.com/casecode/cfr.html. Then follow the search instructions.

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PART A. INTAKE AND CREDIT PROCESSING

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CHAPTER 1: GLB PRIVACY NOTICES

This chapter describes the privacy policy notice required by the federal Gramm-Leach-Bliley Act (GLB Act) – the GLB "Privacy Notice." The chapter covers the source of the law, form of the notice, and timing for giving the notice. Securing proof that the notice was given is also addressed.

Legal background

The federal Gramm-Leach-Bliley Act (GLB Act) and related FTC regulations described as the "Privacy Rule" require "financial institutions" to provide GLB Privacy Notices to consumers which disclose how they handle certain personal information.[1] Dealers must comply with these rules because they facilitate the lease and sale of vehicles on credit and therefore fall within the statutory definition of a "financial institution."[2] The notice to be provided must disclose the dealer's privacy policies and practices including those relating to the confidentiality and security of certain consumer information designated as "nonpublic personal information" such as customer addresses, telephone numbers, social security numbers, driver's license numbers, and account and credit information (see glossary for more information). Basically, this information is what a dealer would obtain from a customer's credit application or credit report, including name, address, and social security number. With certain limited exceptions, the GLB Act prohibits a dealer from disclosing this kind of consumer information to third parties unless the consumer is advised of the potential disclosure and given the opportunity to prohibit the disclosure (the "opt-out" right) and does not do so.

The FTC's amended Privacy Rule establishes a two-page "Model Privacy Notice" form available for use by dealers and other financial institutions to describe their privacy policies.[3] Proper use of the Model Privacy Notice to accurately reflect the dealership's privacy policies creates a "safe harbor," meaning that the notice and content requirements of the Privacy Rule will be presumed satisfied.

Who must receive the notice

Customers who lease or purchase on credit from a dealer for personal, family, or household purposes must be given a GLB Privacy Notice. The law arguably requires some cash customers to receive the notice, such as those who purchase insurance and, perhaps, service contracts. To avoid confusion and slip-ups, it is recommended that notices be given to all customers (except commercial and business customers), even those that ultimately pay cash. Additionally, if a dealer collects a consumer's contact information (i.e., an "up") before the credit application is taken, and the dealer provides such information to a third-party vendor to provide follow-up or other marketing for the dealer, such consumers should be provided the dealer's GLB Privacy Notice even if they do not ultimately become a customer of the dealership.

[1] 15 U.S.C. § 6801 et seq.; 16 CFR Part 313
[2] 16 CFR § 313.3(k)
[3] 16 CFR Part 313, Appendix A

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When to give the notice

GLB Privacy Notices must be given no later than the time a retail installment contract or lease is signed. However, it is strongly recommended that the notice be given no later than when a credit application is taken. Additionally, as mentioned above, if a dealer collects consumer contact information before the credit application is taken, and the dealer gives such information to a third-party vendor to perform follow-up or other marketing services for the dealership, then the dealer must give the privacy notice at the time such information is received.

For "Buy Here, Pay Here" operations, or in circumstances where a dealer holds paper for transactions that the dealer could not assign, the dealer must give the privacy notice annually, preferably by first-class mail to the individual's last known address.[4] Annual notice timing is measured according to a standard twelve-month period each dealer designates: for example, a calendar year. The first annual notice is due by the end of the year following the year in which the initial notice was given. After that, notices must be given any time during, but no later than, the end of each subsequent year.

How to give the notice

The GLB Act does not mandate a particular delivery method for giving the initial privacy notice, except that the delivery method must be reasonably expected to provide an actual written copy of the notice to the consumer, unless the customer agrees to accept notice electronically (see discussion below).[5] Physically handing notices to customers is the recommended way of providing the notice. Mailing is another appropriate means of delivering a notice but is best reserved for special circumstances.

DEALER TIP: ATTORNEY REVIEW
An attorney should approve the form and content of any GLB privacy notice used by a dealer and determine if it should include an opt-out provision.

Content of the notice

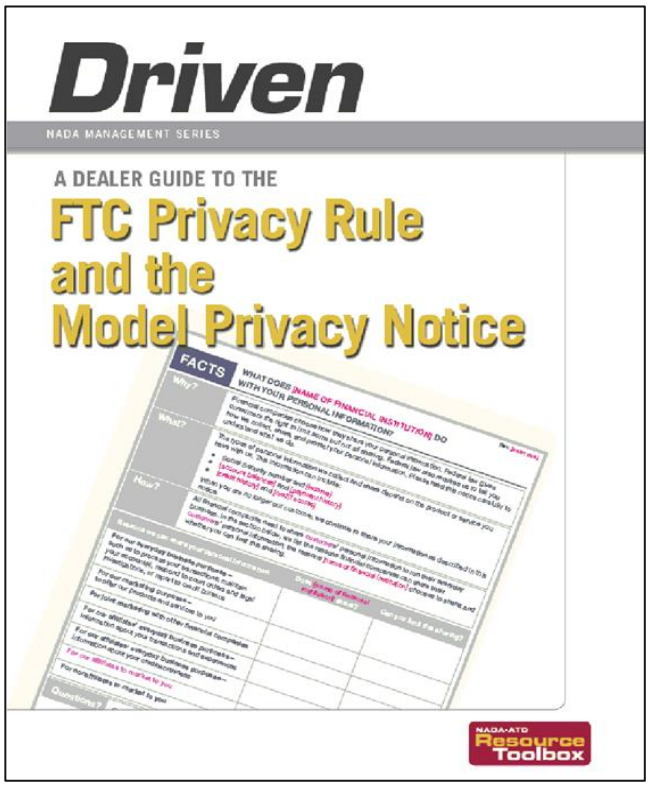
The Model Privacy Notice form is designed to allow a financial institution to disclose the nature of the information it collects and its information sharing practices in a concise and easily understood manner. Detailed instructions on completing a model form, including a version which provides an opt-out right for consumers, can be found on the Federal Reserve Board's online Form Builder available at: www.federalreserve.gov/bankinforeg/privacy_notice_instructions.pdf.

The accurate completion of a Model Privacy Notice form is not as simple as it might first appear. The version of the form to be used by a dealer is dependent upon what the dealer does with the nonpublic personal information obtained from customers. The National Automobile Dealers Association (NADA) has extensively studied this subject and developed a guide entitled "A Dealer Guide to the FTC Privacy Rule and the Model Privacy Notice." This guide is not intended as legal advice, but helps dealers understand the compliance issues involved in giving a privacy notice.

[4] 16 CFR § 313.5
[5] 16 CFR § 313.9(a)

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NADA Management Guide: "FTC Privacy Rule and the Model Privacy Notice"



This guide may be accessed by NADA members (login required) at its website, www.nada.org. With the permission of NADA, an example Model Privacy Notice form is shown below (Appendix A of the NADA guide). This example form, which does not include a consumer opt-out provision, is based upon a hypothetical dealer who does not share nonpublic personal information with any third party other than in situations where a consumer opt-out right is not triggered.

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Sample GLB Privacy Notice

(This is not a one-size-fits-all form.)

FACTS **WHAT DOES TYPICAL MOTORS DO WITH YOUR PERSONAL INFORMATION?**

Why?

Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

What?

The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Social Security number and income
- Credit history and credit scores
- Employment information and checking account information

When you are *no longer* our customer, we continue to share your information as described in this notice.

How?

All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons **Typical Motors** chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Typical Motors share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes— to offer our products and services to you	Yes	No
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes— information about your transactions and experiences	No	No
For our affiliates' everyday business purposes— information about your creditworthiness	No	We don't share
For nonaffiliates to market to you	No	We don't share

Questions? Call (800) 555-1212 or go to www.typicalmotors.com/privacy

Paper or electronic notice

A dealer privacy notice can be given to a customer in paper or electronic form. However, unless the consumer agrees in advance to receive the notice in electronic form, delivering the privacy notice electronically does not comply with the requirements of the Privacy Rule.[6] Additionally, electronic notices have a number of specific requirements, and you should consult with competent counsel if considering providing notices in electronic form.

[6] 16 CFR § 313.9(a) and (b)(2)(ii)

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Because of these requirements, the electronic delivery of a privacy notice is usually reserved for transactions taking place entirely over the Internet and where sufficient technical resources are available to secure the needed proof of delivery and customer consent.

Privacy notice relating to affiliates

Dealerships that share customer information with related entities and/or affiliates (e.g., dealer groups that share information between dealerships or provide dealerships with access to a common database) are subject to additional requirements that impact the content of their privacy notices.

Under the Fair Credit Reporting Act (FCRA), if an entity shares certain customer information (e.g., credit applications and credit reports) with an affiliate, the entity may be considered a "consumer reporting agency" and become subject to burdensome regulations.[7] This burden can be avoided if the entity provides a notice of that sharing practice to each customer together with an opt-out right giving the customer the ability to prohibit certain information-sharing. Additionally, under the FTC Affiliate Marketing Rule, if an entity shares customer information with an affiliate which the affiliate uses to solicit customers, the entity is required to disclose that sharing practice to each customer and provide an opt-out right. The Model Privacy Notice form allows for the disclosure of these affiliate information-sharing practices and may include the required customer opt-out provision. The NADA's "A Dealer Guide to the FTC Privacy Rule and the Model Privacy Notice" (discussed previously) and "A Dealer Guide to the FTC Affiliate Marketing Rule" provide guidance relating to the notice issues arising from a dealer sharing information with an affiliate. Dealers with affiliates should consult legal counsel to create a compliance strategy to ensure that information is not shared or that opt-outs are handled properly.

Proving the notice was given

Just as the GLB Act does not mandate a particular way to give the notice, it does not mandate that proof of receipt be obtained from the customer.

However, if customer signatures are not obtained, a dealer should have evidence to establish a reasonable expectation that all customers received the notice. Such evidence can be in the form of company policies, employee training and enforcement, and records of the dealer's purchase of sufficient quantities of notice forms to supply at least one to each customer.

[7] 15 U.S.C. § 1681a(f)

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As stated previously, there is no prohibition against having a customer sign an acknowledgement of receipt regarding a GLB Privacy Notice. However, some customers refuse to sign such acknowledgements, claiming that they will not "agree" to the types of permissible information-sharing reflected on the notice. Such customers should be advised that they are not being asked to agree to anything beyond the fact that they received a copy of the privacy notice.

DEALER TIP: CUSTOMER SIGNING PRIVACY NOTICE

The law does not require a customer signature on the GLB privacy notice. Even so, some dealers prefer to obtain customer signatures to prove delivery.

California law regarding personal information

The handling of personal information is the subject of the extensive California Consumer Privacy Act (CCPA) which was recently enacted and requires businesses meeting certain criteria to notify consumers about the specific personal information of theirs that has been collected.[8] The CNCDA's "CCPA Compliance Handbook (3rd Ed.)" discusses the CCPA and provides guidance related to the issues arising from dealers handling customers' personal information. Even before the enactment of the CCPA, California law gave customers the right to ask for the types of personal information shared and the name and address of the third parties receiving the information, if a dealer provides a customer's personal information to third parties for the third parties' direct marketing purposes.[9]

[8] Civil Code §§ 1798.100 - 1798.199
[9] Civil Code § 1798.83

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CHAPTER 2: RED FLAGS RULE/VERIFYING CUSTOMER IDENTITY

This chapter discusses the process of verifying the identity of each F&I customer and the laws and legal issues that make this an essential step.

Legal background

The FTC Red Flags Rule requires dealers and other businesses that offer credit to establish policies to detect, prevent, and mitigate identity theft.[1] Numerous other federal and state laws support the policy of verifying a customer's identity.

For example, California law defines and outlaws identity theft.[2] These laws are primarily designed to target identity thieves, but also can impact those who willingly aid and abet the wrongful use of customer information. Under a number of other laws, dealers are presumed to know a customer's identity, required to use the proper customer name to sell and register a vehicle, and in effect mandated to check a customer's photo identification.[3]

Under federal law, users of credit reports must take reasonable steps to verify the identity of a consumer when a credit report includes certain alerts (for example, a fraud alert or active duty alert) or a credit reporting agency generates a notice of an address discrepancy.[4] Similar duties exist for users of credit reports under California law when certain key credit application information does not match the information listed on the consumer's credit report.[5]

Finally, bank and finance company retail dealer agreements almost always require the dealer to provide assurance or sometimes an unconditional guaranty that no identity theft is involved. Such agreements sometimes commit the dealer to provide a warranty to the bank or finance company that the customer's signature is genuine.

California law regarding personal information

Under the Red Flags Rule, a dealer must develop a written identity theft prevention program consisting of reasonable policies and procedures to identify, detect, and respond to patterns, practices, or specific activities that indicate a possible existence of identity theft. These patterns, practices, or activities are described as "red flags." To develop such an identity theft prevention program, a dealer is required to do all of the following:

- Identify dealership credit accounts that the program should cover (conditional sale contracts or leases involving vehicles to be used for personal, family, or household purposes are covered; and certain business transactions may be covered depending on the risk of identity theft);

[1] 16 CFR § 681.1(d)
[2] Penal Code §§ 530 and 530.5
[3] Civil Code § 1785.14(a)(2)
[4] 15 U.S.C. § 1681c-1; 16 CFR §641.1
[5] Civil Code § 1785.20.3

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- Identify relevant red flags and incorporate them into the program (examples of red flags listed in the Red Flags Rule are a good starting point);
- Identify the ways a dealership detects red flags included in the program;
- Identify how a dealership will respond to red flags that are detected in order to prevent identity theft or reduce any harm that might result if identity theft occurs; and
- Provide means for the program to be updated periodically (at least annually) to reflect changes in identity theft risks to customers and the dealership (a dealership's board of directors or senior management should approve the program and designate a compliance officer and program coordinator to oversee and implement the program, including the training of dealership personnel).

The NADA Guide titled "A Dealer Guide to The FTC Red Flags and Address Discrepancy Rules: Protecting Against Identity Theft" is a good source of information for a dealer on developing an identity theft protection program. This guide, which is not intended as legal advice, is available at www.nada.org (login required). The FTC also has a website, www.ftc.gov/redflagsrule, which provides guidance for creditors subject to the Red Flags Rule.

DEALER TIP:
Once the credit report is properly pulled, complete the following steps:
- ✓Compare customer to photo on ID
- ✓Compare customer signature to that on ID
- ✓Keep a copy of the photo identification
- ✓Zero tolerance for straw purchasers
- ✓Do not routinely accept "powers of attorney"
- ✓Gather Form 8300/FinCEN data when required
- Name mismatch – customer vs. bureau
- Social mismatch – customer vs. bureau
- Address mismatch – customer vs. bureau
- Fraud Alert (or Security Alert)
- Active Duty Alert
- Credit report alerts and warnings

Scrutinize the customer

Dealership personnel should consistently follow their dealership's identity theft prevention program. A sample list of items which would be part of a typical dealership identity theft prevention program is shown below. The items on this list should be followed in every deal, whether it involves a cash purchase, credit purchase, or lease. Key elements are as follows:

Compare customer to photo on ID

Inspecting a driver's license or other photographic identification before selling or leasing a vehicle should be part of a dealer's identity theft prevention program. Moreover, California law mandates that credit-reporting agencies require their subscribers to instruct employees to check a customer's photo identification before pulling a credit report.[6]

Compare customer signature to that on ID

Even if the photo ID matches the customer, comparing the signature is important to provide evidence that the customer in fact signed all documents bearing the customer's signature.

Keep a copy of the photo ID

A copy of the photo ID should be retained as evidence that it was actually requested and examined. A copy can also help if there are any issues regarding the customer's identity in the future. There is no prohibition against

[6] Civil Code § 1785.14(a)(2)

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a prospective customer allowing his or her driver's license to be copied. California law prohibits copying of a valid license only if the copy could be mistaken for an original license.[7] With normal black and white photocopying on 8 ½" x 11" paper, the copy would not be mistaken for an original license. Driver's license data, however, should be treated as personally identifiable non-public information for purposes of privacy laws and the GLB Safeguards Rule. (See Chapter 1, GLB Privacy Notices, and Chapter 51, Safeguarding Computerized Consumer Data).

Electronic scanning or swiping of drivers' licenses and identification cards

California law restricts the use of electronic data "scans" or "swipes" of driver's licenses and DMV-issued identification cards.[8] Licenses and identification cards may only be scanned or swiped in the following circumstances: to verify the customer's age, to verify the authenticity of the driver's license or identification card, to transmit information to a check service company for the purpose of approving a check, electronic funds transfer, or similar methods of payment, or to investigate or prevent fraud, abuse, or material misrepresentation. Use or storage of the electronically scanned or swiped data for any other purpose is illegal.

Zero tolerance for straw purchasers

Dealership personnel should be ready to sound the alarm if there is an indication that a buyer named in the paperwork is not the actual purchaser of the vehicle. Many identity theft claims come from people who supposedly gave their permission to be named on the contract. Securing evidence that the named purchaser gave such permission to the straw purchaser would be counterproductive. Virtually every retail dealer agreement with a finance company requires the person named on the purchase contract and credit application to truly be the purchaser. The issue is best handled by simply prohibiting straw purchasers altogether. A zero-tolerance policy will protect a dealer from typical schemes used by straw purchasers, such as the use of a third party's address, driver's license, social security number, employer, and bank references.

Gather Form 8300/FinCEN data when required

Gathering cash-reporting data for IRS Form 8300/FinCEN (Financial Crimes Enforcement Network) is essential not only because it is required by law, but also because collecting such data can help to establish the true identity of the customer. (See Chapter 4, Form 8300 Cash Reports).

Scrutinize the credit report

As discussed at the beginning of this chapter, once pulled for legitimate purposes, dealers are required by law to make various checks of a consumer's credit report. Most of these checks can be performed with little effort through tools available through credit aggregators. If specific warning signs are found, dealers must take appropriate steps to verify the customer's identity before proceeding with a credit transaction.

[7] Vehicle Code § 14610(a)(7)
[8] Civil Code § 1798.90.1

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Fraud alerts, active duty alerts, security alerts, and similar warnings

Federal law allows a consumer who suspects identity theft to place an "initial fraud alert" or an "extended fraud alert" in his or her credit file.[9] A California law that went into effect even before this federal law provides for a similar alert, referred to as a "security alert," and also requires each item of credit listed on the report (the "tradelines") to be reviewed for any blocks resulting from identity theft.[10] Federal law also allows active-duty military personnel on deployment to place an "active duty alert" in their file.[11]

If dealership personnel find an "extended fraud alert" they must, before proceeding with a lease or credit transaction, contact the consumer in person, by phone, or by another reasonable contact method specified by the consumer in the alert to verify his or her identity.

If dealership personnel find an "initial fraud alert" or an "active-duty alert" (or a "security alert" or identity theft block of more than one tradeline) they must not extend credit until they contact the consumer at a telephone number specified by the consumer on the alert and take other reasonable steps to verify the consumer's identity.

Dealership personnel may also encounter a "security freeze" when requesting a consumer's credit report. Under California law, this security freeze prohibits a credit reporting agency from releasing the consumer's credit report without the express authorization of the consumer.[12]

Dealership personnel should document efforts to verify identity when facing a fraud alert, security alert, or identity theft block. For example, after independently verifying that no identity theft is involved, a memo may be prepared that gives a step-by-step account of everything that was done to verify a customer's identity. This memo should then be included in the deal jacket. Copies of any documents obtained for verifying a customer's identity should also be retained.

Name, address, and social security number comparison

Under the Address Discrepancy Rule, a dealer using a credit report must be on the lookout for a notice of address discrepancy from the credit reporting agency. This notice is issued when a substantial difference exists between the consumer address the dealer provided and the address the credit reporting agency has on file. Dealers receiving such a notice should have policies and procedures in place designed to allow the dealer to determine on a reasonable belief basis that the credit report relates to the person applying for credit.[13] If such a belief cannot be established, the transaction should not proceed.

Under both federal and California law, if dealership personnel discover that the first and last name, address, or social security number on a credit report do not match the information provided on the credit application, the

[9] 15 U.S.C. § 1681c-1
[10] Civil Code § 1785.11.1
[11] 15 U.S.C. § 1681c-1(c)
[12] Civil Code § 1785.11.2
[13] 16 CFR § 641.1(c)

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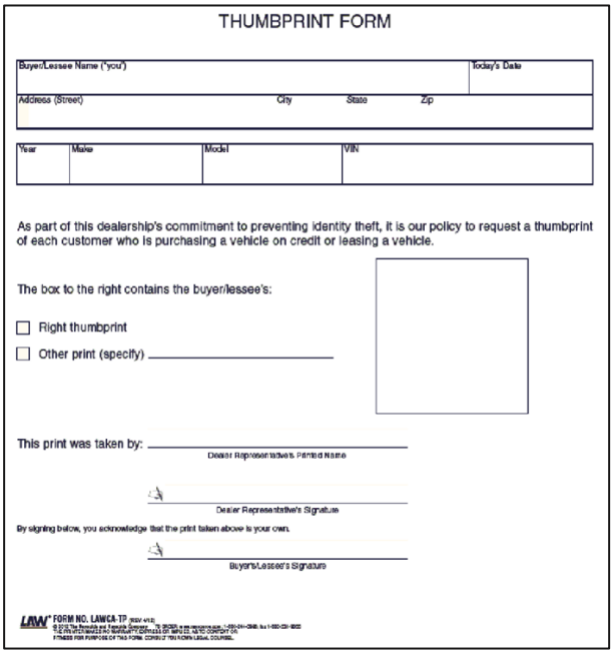
dealership must take reasonable steps to verify the name, address, and social security number to confirm that the transaction is not the result of identity theft.[14]

Reasonable steps to confirm identity when warning signs are found

A dealership's identity theft prevention program should contain policies and procedures for what to do when warning signs are found. Examples of warning signs include when an alert appears, a red flag is detected, or an address, name, or social security number mismatch is found. While there are no absolute guidelines for what constitutes "reasonable steps" to verify identity, typical procedures in such programs include requesting additional identity documentation, such as another government-issued identification or a utility bill. Regarding "alerts," dealership personnel must follow any specific verification instructions contained in the credit report itself. Dealership personnel may also contact lenders to determine what additional steps they would take to confirm identity under such circumstances.

Fingerprints and thumbprints

Requesting a customer's fingerprint (typically a thumbprint) to deter identity theft is a practice that is not prohibited by state or federal law. However, that practice does have some public relations and privacy concerns. Dealers who collect thumbprints should be prepared to address situations where a customer refuses to give a thumbprint. This situation may be handled by taking other alternative steps to verify the customer's identity. Any thumbprint records obtained by a dealership should be protected in the same manner as other highly confidential information, such as the information contained on credit applications. The Reynolds and Reynolds Thumbprint Form (Form LAWCA-TP) shown here is an example of a form that can be used when a dealership decides it is prudent to fingerprint customers.



THUMBPRINT FORM

Buyer/Lessee Name ("you") | Today's Date

Address (Street) | City | State | Zip

Year | Make | Model | VIN

As part of this dealership's commitment to preventing identity theft, it is our policy to request a thumbprint of each customer who is purchasing a vehicle on credit or leasing a vehicle.

The box to the right contains the buyer/lessee's:

☐ Right thumbprint

☐ Other print (specify) _____

This print was taken by: _____
Dealer Representative's Printed Name

_____
Dealer Representative's Signature

By signing below, you acknowledge that the print taken above is your own.

_____
Buyer's/Lessee's Signature

LAW FORM NO. LAWCA-TP

Check identification of co-applicants

Dealership personnel should follow identity theft prevention program procedures regarding co-buyers and co-lessees as well.

[14] Civil Code § 1785.20.3

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CHAPTER 3: OFAC SCREENING

This chapter discusses the legal prohibition against doing business with individuals who appear on certain government lists. Screening customers by checking readily available databases offers significant protection against alleged violation of these laws.

Legal background

The federal laws behind the Office of Foreign Assets Control ("OFAC") were in existence well before September 11, 2001 and include laws against trading with the enemy that go back many years.[1] By executive order in the aftermath of September 11th, OFAC's duties were expanded to include enforcement of Executive Order 13224 and other related orders which prohibit anyone in the country from engaging in business of any kind with those persons designated as terrorists or their associates. Since that order was issued, the terrorist list has been supplemented many times and combined with another list of "Specially Designated Nationals" and several other OFAC-maintained lists to become the main list of specially designated nationals and blocked persons (the SDN List). See https://home.treasury.gov/policy-issues/financial-sanctions/faqs for frequently asked questions and answers regarding OFAC compliance.

OFAC's SDN List

The SDN List contains many thousands of names, aliases, and business names, and is available for download at https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists.

Policy of OFAC compliance

OFAC "doing business with the enemy" violations are considered "strict liability" offenses: lack of knowledge that a customer is on the list is no defense. Therefore, OFAC screening is key to avoiding a violation and the significant administrative fines that can be assessed. A policy of OFAC compliance should therefore not only prohibit doing business with a listed person, but also require that all vehicle buyers or lessees, whether for cash or credit, be checked against the SDN List.

[1] 50 U.S.C. § 1701 et seq.; 50 U.S.C. § 1601 et seq.

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Unlike credit reports, SDN screening does not require notice to the customer or customer permission. Screening can be done at any time prior to the signing of binding agreements or the exchange of money or property. Several options exist for performing the check. Most commonly, credit aggregators include OFAC searches as part of a "credit check services" package. Many of these packages incorporate guidance from the government to help prevent false hits. When handling a cash transaction, where a credit application is unnecessary or inappropriate, dealers can search the SDN list online at https://sanctionssearch.ofac.treas.gov/. Once these system lists are reached, if the dealership would like to confirm that a hit is truly a hit, OFAC can be contacted directly by phone at (800) 540-6322 or (202) 622-2490, or by email at ofac_feedback@treasury.gov.

DEALER TIP: OFAC SCREENING OPTIONS

Credit bureaus offer OFAC screening either as part of the credit report or as stand-alone reports. Other screening sources are available (a Web search for "OFAC + dealership + search" will yield a number of other sources).

The OFAC rules do not in any way relieve businesses from their duties under laws prohibiting discrimination on the basis of ethnicity, country of origin, or other protected classifications. These laws could be used against a dealer who, without a full and complete review of the facts and consultation with OFAC when necessary, issues a hasty refusal to do business simply because the consumer's name is similar to a name on the SDN List.

Dealing with an OFAC match

If a true match does exist and has been verified, the transaction should be terminated and a report should be filed with OFAC using the form titled "Report of Blocked Transactions" found at https://treasury.gov/policy-issues/financial-sanctions/ofac-reporting-system. Although it is permissible to advise the customer of the reason the transaction is being blocked, it is advisable for a dealer to treat that fact as an item of highly sensitive customer information under the dealer's privacy policy.

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CHAPTER 4: FORM 8300 CASH REPORTS

This chapter discusses the IRS Form 8300 Cash Transaction Report.

Legal background

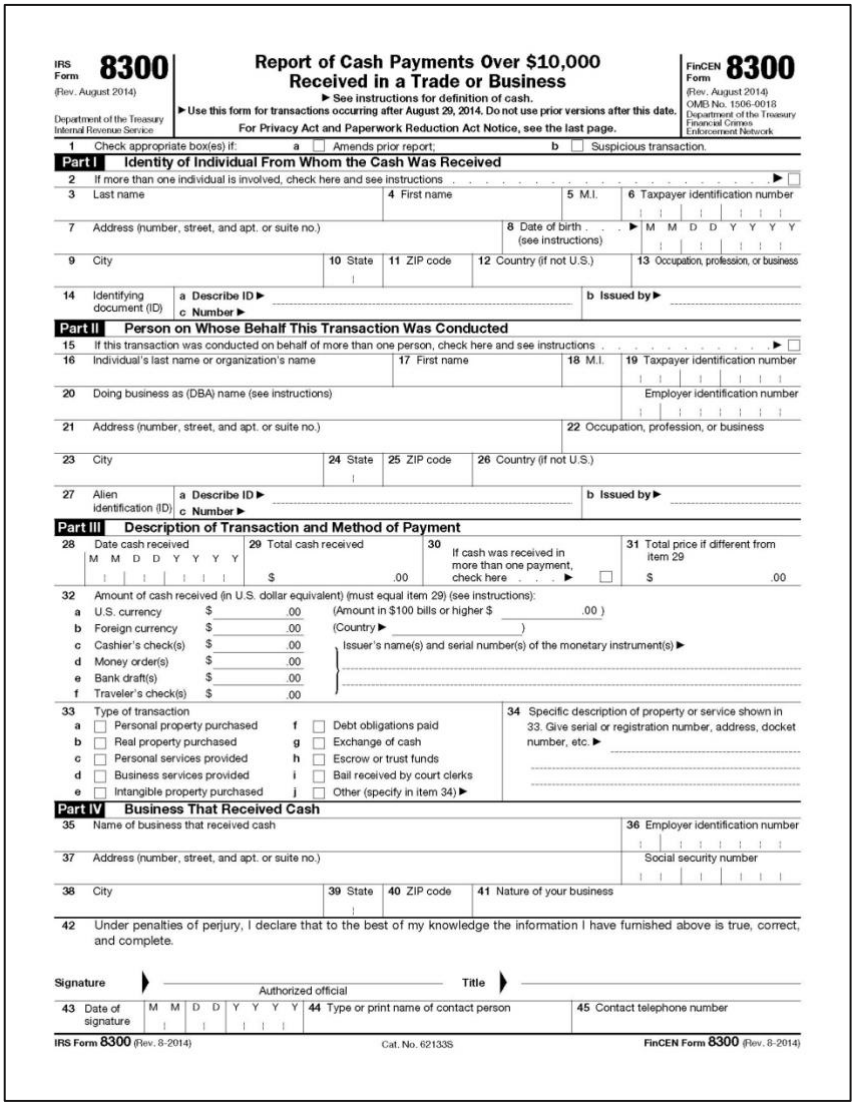
Federal law requires certain cash and cash-equivalent transactions to be reported to the IRS and federal Financial Crimes Enforcement Network (FinCEN) on Form 8300 – the cash transaction report.[1]

Form 8300 Reference

Dealers can access a Form 8300 that can be filled in online at www.irs.gov/pub/irs-pdf/f8300.pdf. A second page of the form should be used when multiple parties are involved, i.e., if box 2 or 15 of the form are checked.

When Form 8300 is required

A Form 8300 must be filed within 15 days if a dealership receives more than $10,000 in cash in a single transaction or in any series of related transactions. For this purpose, "cash" means U.S. and foreign currency in excess of $10,000. It also includes a cashier's check, money order, bank draft, or traveler's check having a face amount of $10,000 or less when presented together with another such instrument, and/or with currency, such that the total amount exceeds $10,000.



IRS Form **8300** (Rev. August 2014)
Department of the Treasury Internal Revenue Service

Report of Cash Payments Over $10,000 Received in a Trade or Business

► See instructions for definition of cash.
► Use this form for transactions occurring after August 29, 2014. Do not use prior versions after this date.
For Privacy Act and Paperwork Reduction Act Notice, see the last page.

FinCEN Form **8300** (Rev. August 2014)
OMB No. 1506-0018
Department of the Treasury Financial Crimes Enforcement Network

1 Check appropriate box(es) if: a ☐ Amends prior report; b ☐ Suspicious transaction.

Part I Identity of Individual From Whom the Cash Was Received

2 If more than one individual is involved, check here and see instructions ► ☐
3 Last name | 4 First name | 5 M.I. | 6 Taxpayer identification number
7 Address (number, street, and apt. or suite no.) | 8 Date of birth (see instructions) ► M M D D Y Y Y Y
9 City | 10 State | 11 ZIP code | 12 Country (if not U.S.) | 13 Occupation, profession, or business
14 Identifying document (ID) | a Describe ID ► | c Number ► | b Issued by ►

Part II Person on Whose Behalf This Transaction Was Conducted

15 If this transaction was conducted on behalf of more than one person, check here and see instructions ► ☐
16 Individual's last name or organization's name | 17 First name | 18 M.I. | 19 Taxpayer identification number
20 Doing business as (DBA) name (see instructions) | Employer identification number
21 Address (number, street, and apt. or suite no.) | 22 Occupation, profession, or business
23 City | 24 State | 25 ZIP code | 26 Country (if not U.S.)
27 Alien identification (ID) | a Describe ID ► | c Number ► | b Issued by ►

Part III Description of Transaction and Method of Payment

28 Date cash received M M D D Y Y Y Y
29 Total cash received $ .00
30 If cash was received in more than one payment, check here ► ☐
31 Total price if different from item 29 $ .00
32 Amount of cash received (in U.S. dollar equivalent) (must equal item 29) (see instructions):
a U.S. currency $ .00 (Amount in $100 bills or higher $ .00)
b Foreign currency $ .00 (Country ►)
c Cashier's check(s) $ .00
d Money order(s) $ .00
e Bank draft(s) $ .00
f Traveler's check(s) $ .00
Issuer's name(s) and serial number(s) of the monetary instrument(s) ►
33 Type of transaction
a ☐ Personal property purchased
b ☐ Real property purchased
c ☐ Personal services provided
d ☐ Business services provided
e ☐ Intangible property purchased
f ☐ Debt obligations paid
g ☐ Exchange of cash
h ☐ Escrow or trust funds
i ☐ Bail received by court clerks
j ☐ Other (specify in item 34) ►
34 Specific description of property or service shown in 33. Give serial or registration number, address, docket number, etc. ►

Part IV Business That Received Cash

35 Name of business that received cash | 36 Employer identification number
37 Address (number, street, and apt. or suite no.) | Social security number
38 City | 39 State | 40 ZIP code | 41 Nature of your business
42 Under penalties of perjury, I declare that to the best of my knowledge the information I have furnished above is true, correct, and complete.

Signature ► Authorized official Title ►
43 Date of signature M M D D Y Y Y Y | 44 Type or print name of contact person | 45 Contact telephone number

IRS Form **8300** (Rev. 8-2014) Cat. No. 62133S FinCEN Form **8300** (Rev. 8-2014)

The term "cash" does not include a personal check, a check drawn on the account of a business, certified personal and business checks, or amounts charged to a credit card. "Cash" does not include traveler's checks or cashier's checks with a value of more than $10,000.

[1] 26 U.S.C. § 6050I

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Data required to complete Form 8300

The major items of personal information that must be collected to complete Form 8300 include the customer's name, address, social security number, birth date, occupation, and name and number of an identification document, such as a driver's license.

Customer notification

No later than January 31 of the year following the year in which Form 8300 was filed, the dealership must give each person named in Form 8300 a written notice that states (a) the aggregate amount of cash received in the reported transaction, (b) that the dealership furnished that information to the IRS, and (c) the dealership's name, address, and telephone number. Sending a copy of Form 8300 itself is not required.

Record retention

Dealership records pertaining to Form 8300 filings should be retained indefinitely (but no less than 5 years) and kept in accordance with the dealership's information security program.

IRS Questions and Answers

An IRS Motor Vehicle Dealership Q&As publication, reproduced on the following pages, answers common dealer questions about Form 8300 and may be found on the IRS website at: https://www.irs.gov/businesses/small-businesses-self-employed/report-of-cash-payments-over-10000-received-in-a-trade-or-business-motor-vehicle-dealership-qas.



Generally, any person in a trade or business who receives more than $10,000 in cash in a single transaction or related transactions must complete a Form 8300, Report of Cash Payments Over $10,000 Received in a Trade or Business (PDF). Form 8300 is a joint form issued by the IRS and the Financial Crimes Enforcement Network (FinCEN) and is used by the government to track individuals that evade taxes and those who profit from criminal activities. Although the cash reporting requirements apply to many types of businesses, auto dealerships frequently receive cash in excess of $10,000 and are required to comply with the filing requirements.

The Motor Vehicle Technical Advisor Program in conjunction with IRS specialists on money laundering would like to assist dealers in their compliance with the filing requirements of Form 8300. In pursuit of that goal, we have compiled a list of dealership-specific questions and answers. As we receive additional questions that need to be addressed, we will update this document as appropriate.

To learn more about the why, when and where to file Form 8300: IRS Form 8300 Reference Guide is now available on IRS.gov. This guide's purpose is to educate and assist U.S. persons who have the obligation to file Form 8300; and for tax professionals who prepare and file Form 8300 on behalf of their clients.

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Dealership-Specific Questions

A customer purchased a vehicle for $9,000 cash. Within the next 12 months, the customer paid the dealership additional cash of $1,500 for a repair to the vehicle's transmission, accessories and a customized paint job, etc. Should a Form 8300 be filed?

- No, unless the dealer knew or had reason to know the sale of the vehicle and the subsequent transactions were a series of connected transactions (for example, if the dealer and the customer agreed, as a condition of the sale of the vehicle, that the customer would be obligated to buy an additional $1,500 of goods or services).
- Transactions are related if they occur within a 24-hour period. Transactions are related even if they are more than 24 hours apart if you know, or have reason to know, that each is one of a series of connected transactions. For example, items or services negotiated during the original purchase are related to the original purchase.

A customer wired $7,000 from his bank account to the dealership's bank account and also presented a $4,000 cashier's check. Does the dealership complete Form 8300?

- A wire transfer does not constitute cash for Form 8300 reporting. Since the remaining cash remitted was below $10,000, the dealer has no 8300 filing requirement.

A customer makes weekly payments in cash to a dealership as a lease payment or loan payment on a vehicle. During a 12-month period, these payments total more than $10,000. Are these payments considered related transactions and is the dealership required to file a Form 8300?

- Yes, the weekly lease or loan payments constitute payments on the same transaction (the leasing or purchase of the vehicle).
- Accordingly, the dealership is required to file Form 8300 when the total amount exceeds $10,000.
- Each time the payments aggregate in excess of $10,000 the dealership must file another Form 8300 within 15 days of the payment that causes the previously unreportable payments to total more than $10,000.

A husband and wife purchase two cars at one time from the same dealer and the total cash received is $10,200. How many Form 8300s should the car dealer file?

- The transaction(s) can be viewed as either a single transaction or two related transactions. Either way, it warrants only one Form 8300.

If a customer purchased a cashier's check at the bank for over $10,000, would the bank report the transaction? Does the seller of a vehicle need to report the transaction if the same cashier's check is subsequently used to purchase a vehicle?

- If the cashier's check was purchased with cash exceeding $10,000, the bank would file a Currency Transaction Report (not a Form 8300).

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- The purchase of a vehicle with a cashier's check, bank draft, traveler's check or money order with a face amount of more than $10,000 is not treated as cash and a business does not have to file Form 8300 when it receives them.

Form 8300 requires providing the Taxpayer Identification Number (TIN) of the person providing the cash. If the business is unable to obtain the Taxpayer Identification Number of a customer making a cash payment of over $10,000, should the business file Form 8300 anyway?

Yes, to fail to file the Form 8300 is prohibited in this situation. However, a filer may be able to avoid penalties when the customer refuses to provide a TIN by showing that its failure to obtain the TIN is reasonable under circumstances more fully described in 26 CFR 301.6724-1(e). At a minimum:

- The business should request the TIN at the time of the transaction. If the person providing the cash refuses to provide the TIN, the business should inform the person required to provide the TIN that he or she is subject to a $50 penalty imposed by the Internal Revenue Service under section 6723 [26 USCS § 6723] if he or she fails to furnish his or her TIN;
- Maintain contemporaneous records showing the solicitation was properly made and provide such contemporaneous records to IRS upon request,
- Accompany the incomplete filed Form by a statement explaining why the TIN is not included.
- If a TIN is not received as a result of the initial solicitation (at the time of the transaction) the first annual solicitation must be made on or before December 31 of the year in which the account was opened (transaction occurred) or January 31 of the following year for accounts opened in the preceding December following the same procedures.

How should a dealership handle a nonresident alien with no SSN?

- Use the IRS Individual Taxpayer Identification Number (ITIN) if the nonresident has one. If there is no ITIN, item 6 of Form 8300 should be left blank. Pub 1544 provides a list of exceptions in which a filer is not required to provide a Taxpayer Identification Number of a person who is a nonresident alien individual or a foreign organization.
- You must verify the individual's name and address and insert this information on Item 14 of Form 8300. For nonresident aliens, acceptable documentation would include a passport, alien registration card or other official document.

Do payments in excess of $10,000 in cash paid to a body shop need to be reported? Do the 8300 filing requirements apply to services as well as goods?

- Yes. Cash, in the form of currency, received in excess of $10,000 must be reported. However, a service is not a consumer durable, so the expanded definition of cash does not apply to payments for services. The body shop would file an 8300.

A dealership sold cars on Jan. 31 and Feb. 6 to one customer and received $20,000 cash in two payments of $10,000 each on the same date for the two cars. Is a Form 8300 required?

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- Yes. The dealership received over $10,000 in cash within 24 hours.

Customer purchased five cars, each separately though the year totaling $15,000 and none of which individually exceeded $10,000. Is Form 8300 required?

- If the dealer knows, or has reason to know, that each transaction is one of a series of connected transactions a Form 8300 would be required. If there is no reason to believe that they are connected, the five transactions would be viewed as separate transactions none of which exceed $10,000 in cash and a Form 8300 would not be required.

A dealership receives greater than $10,000 in cash on day one for the sale of a vehicle. On day three, the deal is cancelled due to an inability to finance the deal. The dealership returns the cash. Is a Form 8300 required?

- Yes. Once the dealership receives cash exceeding $10,000, a Form 8300 must be filed.
- The deal not going through may in fact be an attempt to launder illegal funds.
- If $10,000 or less was received by the dealer and the deal was cancelled, the dealer may voluntarily file a Form 8300 if the transaction appears suspicious.

Does the IRS consider it cash, or a cash equivalent, if a dealership receives a cashier's check drawn on the funds of the bank with the customer's personal account number and customer name on it (not checks drawn on a personal checking account or on a personal account of the customer)?

- Cashier's checks (sometimes called a "treasurer's check" or "bank check") drawn on the bank's account and not the account of the customer in the amount of $10,000 or less are considered cash under the expanded definition, unless they are loan proceeds. See the definition of "cash" in the instructions for the Form 8300 for more information on the expanded definition of cash, including when it applies.
- The fact that there are notations on the check or that the check is made payable to the dealership does not negate this.

A customer purchases a vehicle for $15,000 and pays for it with $9,000 in cash and puts the remaining $6,000 on a personal credit card. Should a Form 8300 be filed? Instead of a personal credit card, the customer pays the remaining $6,000 with his ATM or debit card. Is the ATM or debit card amount considered cash or a cash equivalent that makes the total amount received over $10,000 and thus reportable on Form 8300?

- No Form 8300 is required.
- Less than $10,000 in cash was received. A credit card is not cash.
- The ATM or debit card works the same as a credit card in this instance. The only difference is that the account will be charged with a debit against existing funds in the customer's bank account instead of creating a debt to be repaid later.
- An ATM or debit card transaction is not treated as cash for purpose of filing a Form 8300; therefore, since the amount received in cash or cash equivalents is less than $10,000, the transaction is not reportable.

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For wholesalers, where a purchasing retailer buys more than one vehicle in a single day, is that one transaction, a series of related transactions or a series of unrelated transactions given that there are multiple vehicles? What happens on separate purchases over the course of a week? What about a month?

- Two or more transactions within a 24-hour period are related transactions. A trade or business that receives more than $10,000 in related transactions must file Form 8300.
- If purchases are more than 24 hours apart and not connected in any way that the seller knows, or has reason to know, then the purchases are not related and a Form 8300 is not required.

What exactly can be said to a customer inquiring about IRS Form 8300 reporting? Some dealers are advised not to refer to IRS Form 8300 reporting in the presence of the customer. In particular, dealers are concerned that advising customers that they need information for an IRS 8300 report could degenerate into a structuring conversation. What if the customer asks what the information is for? Can the dealer volunteer that it is for IRS Form 8300 reporting?

- A customer can be, but is not required to be, told at the time of the transaction about the law requiring the reporting of cash payments over $10,000 to the IRS and FinCEN.
- What a dealer cannot do is aid a customer in structuring a transaction to prevent a Form 8300 from being filed.
- A dealer who is filing Form 8300 voluntarily in order to report a suspicious transaction should not inform the customer of the filing.

What are the penalties if a dealership does not file a Form 8300?

- There are civil penalties for failure to file a correct Form 8300 by its due date and for failure to provide a statement to the payor as required. No statement to the payor is required when voluntarily filing a Form 8300 in order to report a suspicious transaction. The statement to the payor is only required when the business is required to file a Form 8300.
- Additional penalties apply for intentional disregard of the filing requirements and criminal penalties may apply in the case of willful filing of false or fraudulent Forms 8300.
- Penalties for violation of the Form 8300 filing and furnishing requirements have been increased by the Trade Preferences Extension Act of 2015. Increased penalties apply to Forms 8300 and related notices requiring filing or furnishing after December 31, 2015. In addition, penalty amounts are now adjusted annually for inflation.

Can Form 8300 be filed electronically?

- Yes. On Sept 19, 2012, FinCEN announced that businesses are now able to electronically file their Form 8300 using the Bank Secrecy Act (BSA) Electronic Filing (E-Filing) System. E-filing is free, and is a quick and secure

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way for individuals to file their Form 8300s. Filers will receive an electronic acknowledgement of each submission. For more information about Form 8300 e-filing, read the FinCEN news release.

A dealership receives monthly ACH payments [automatic payments from a customer bank account]. If the payments total in excess of $10,000, should the payments be treated as cash?

- ACH payments are not considered cash for the purpose of reporting on Form 8300.

A related finance company provides financing to customers of multiple related used vehicle dealerships. The finance company purchases contracts from the used car lot and a cashier's check is issued to the car lot for the amount of the car deal. Would the definition of cash to include cashier's checks and money orders apply to the finance company?

- As to the sale to the customer, the dealership's sale of the vehicle constitutes a retail sale of a consumer durable requiring reporting of certain monetary instruments if the face amount was $10,000 or less and the total transaction exceeds $10,000.
- When the finance company purchases the "finance contract," they do not have a designated reporting transaction. The finance contract is not a consumer durable, collectible, or travel or entertainment activity. Thus monetary instruments with a face amount of $10,000 or less received from the finance company to pay off the finance contract would under normal situations not be reportable.

I understand that the dealership must provide a written statement to the customer by Jan 31 of the year following the Form 8300 filing. Can the dealership use the sales invoice (or the Form 8300) to satisfy the written statement requirement if the invoice has language printed on it that cash sales over $10,000 are reported to the IRS?

- There is nothing in the Code or regulations mandating a specific format for the customer statement. The regulations, however, establish certain minimum requirements. As long as these minimum requirements are met, there would be no problem if the seller chose to print the required language on an invoice.
- The statement must contain the following information:
    - The name and address of the person completing Form 8300;
    - The aggregate amount of reportable cash in all related cash transactions; and
    - A legend stating that the seller is reporting the information contained in the statement to the Internal Revenue Service.
- If during the calendar year, the dealer has more than one transaction with the customer, furnishing multiple copies of the sales invoice (or Form 8300s) would not meet the notice requirements because it is not a 'single' statement. In this situation, the dealer should provide a single written notice for all of the transactions.

What type of records might an examiner request during an 8300 examination?

- Records requested may vary by examiner but typically the following records are requested:
    - Checking, savings, and/or other financial account statements and deposit slips.

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- An electronic bank deposit reconciliation in a spreadsheet format extracted from the dealer's Dealers Management System (DMS). The report generally requires all receipts of the business from any source including:
  - The amount, date received, method of payment (cash, check, credit card number, etc.),
  - Payer name, and
  - Receipt number.
- Receipt sources should include new and used vehicle sales, leases, service, parts, body shops and any non-customer receipts.
- Deal jackets for leases and sales during the examination period.
- Sales journals, cash receipts journals, accounts/notes receivable, sales invoices.

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CHAPTER 5: CREDIT APPLICATIONS

This chapter discusses laws governing credit applications and how credit applications should be filled out and handled.

Legal background

Taking a credit application is a bit like crossing an international border. Once that step is taken, an entirely new set of customs and laws apply. Legal compliance areas that are triggered when credit applications are taken include the following:[1]

- Equal Credit Opportunity Act (ECOA)
- Fair Credit Reporting Act (FCRA)
- FACT Act amendments to FCRA
- Gramm-Leach Bliley Act (GLB Act)
- California versions of the above

Preventing discrimination and overseeing credit report usage are key goals of most of these laws. To further these goals, the laws focus on the period of time between receipt of the application by the dealer and either the extension of credit or a rejection of the extension of credit. Extra attention to detail during this time can avoid costly legal mistakes.

Prohibit "informal" applications

Having these laws triggered when a credit application form is completed is bad enough, but it is even more troublesome to have them triggered by events taking place well before an application form is prepared. This can happen, for example, if the customer's credit is discussed or evaluated before the credit application is completed. A dealer can avoid these problems by having a policy requiring every customer to complete a credit application before any discussion or evaluation of the consumer's credit occurs.

Example	Incorrect	Correct
Customer: "I've been out on disability for six months. Can I still get 3% financing for this car?"	"No." "Yes" "What's your FICO?"	"We can easily find out when we get to the credit application stage."

Prevent credit discrimination

Dealership personnel should never engage in any conduct that discourages anyone from submitting a credit application or discriminates against an existing applicant on the basis of race, color, religion, national origin, sex,

[1] 15 U.S.C. §§ 1681 et seq., 1691-1691f, and 6801 et seq.; Civil Code §§1785.1-1785.36, 1786-1786.60, and 1787.1- 1787.4

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marital status, familial status, age (if over the age of majority), public assistance program income, or good faith exercise of legal rights under applicable laws.

When to obtain a credit application

A credit application should be obtained for every customer before a conditional sale contract or lease is signed. It is also acceptable to require "cash" or "one-pay" customers paying by personal check to complete a credit application. However, it is illegal for dealership personnel to require a person paying by check to provide a credit card or to record the individual's credit card number.[2] The law does allow a dealer to request (but not require) a customer to show a credit card for identification purposes.

When not to obtain a credit application

Dealership personnel should not require a full credit application where the customer's purchase is truly an all-cash upfront transaction (e.g., payment by cashier's check). Dealership personnel should also not collect credit information from an individual who uses a credit card as payment in full for the purchase of the vehicle.

What NOT to ask

Dealership personnel taking credit applications should be aware that certain information should not be requested of an applicant. Information that may not be requested includes the following:[3]

- Marital status information, except that an applicant may be asked (using these exact terms only) whether he or she is "married, unmarried, or separated." Dealership personnel may explain to an applicant that the designation "unmarried" includes single, divorced, and widowed persons.
- Whether income stated on an application is derived from alimony, child support, or separate maintenance payments, unless it is disclosed to the applicant that such income need not be revealed if the applicant does not want it considered in determining the applicant's creditworthiness.
- Sex of the applicant, except that an application may include an optional designation of a title (such as Ms., Miss, Mr., or Mrs.).
- Birth control practice, intentions concerning the bearing and rearing of children, or capability to bear children. Dealership personnel may inquire about the number and ages of an applicant's dependents, or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.
- Race, color, religion, or national origin of an applicant. Dealership personnel may inquire about an applicant's permanent residence and immigration status.

What about "5 liners?"

The practice at some dealerships is to request a so-called "5 line" credit application by marking or highlighting only four or five sections of the credit application for the customer to complete. Sometimes this is limited to only

[2] Civil Code § 1725(a)(1) and (3)
[3] 12 CFR § 202.5

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the customer's name, contact information, social security number, and signature. This is done to secure permission to pull a credit report as soon as possible.

While not illegal, there are a number of risks associated with this practice. For example, a finance source may object to the incomplete application. A customer could also claim he or she was asked to sign a form with blanks to be filled in later by the dealer – which would be a violation of the law.

Contract forms have clauses that require the customer to verify information provided in the credit application. If only a 5 liner is used, a dealer will probably have no rights under this clause as to any of the items left blank on the credit application.

Having each customer complete as much information on the credit application form as possible will also help the dealer detect and avoid identity theft. (See Chapter 2: Red Flags Rule/Verifying Customer Identity for more information).

If 5 liners are used, dealership personnel should clearly highlight on the form the sections to be completed and put lines through the remaining sections to establish that they are not being left blank for later completion by the dealer.

Telephone and Internet credit applications

The law does not prohibit interviewing a person over the telephone for purposes of gathering information to be used for that person's application for credit. However, credit application forms used by dealers contain important written authorizations and representations given by the applicant. Perhaps the most important authorization contained in printed credit application forms is the applicant's written authorization for the dealer (and finance sources) to obtain and review a credit report.

Obtaining the authorizations and representations found in printed credit application forms over the telephone is difficult – try reading aloud the text at the end of a credit application form. In addition, absent extraordinary steps, a telephone conversation does not provide direct evidence that the necessary authorizations and representations were in fact given by the applicant. Therefore, telephone credit applications are generally not recommended.

Applications obtained over the Internet or by fax pose fewer problems but should also be approached cautiously and undertaken only after a comprehensive process is established to ensure secure communications, verification of customer identity, verification of a valid "e-signature" on the credit application, and adequate and secure recordkeeping and workflow. Both federal and California law provide specific requirements for the use and validation of electronic signatures.[4] Dealers seeking to implement an online credit application program should consult with competent legal counsel to ensure these laws are satisfied before taking applications electronically.

[4] 15 U.S.C. § 7001; Civil Code § 1633.1 et seq.

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Obtaining a completed credit application

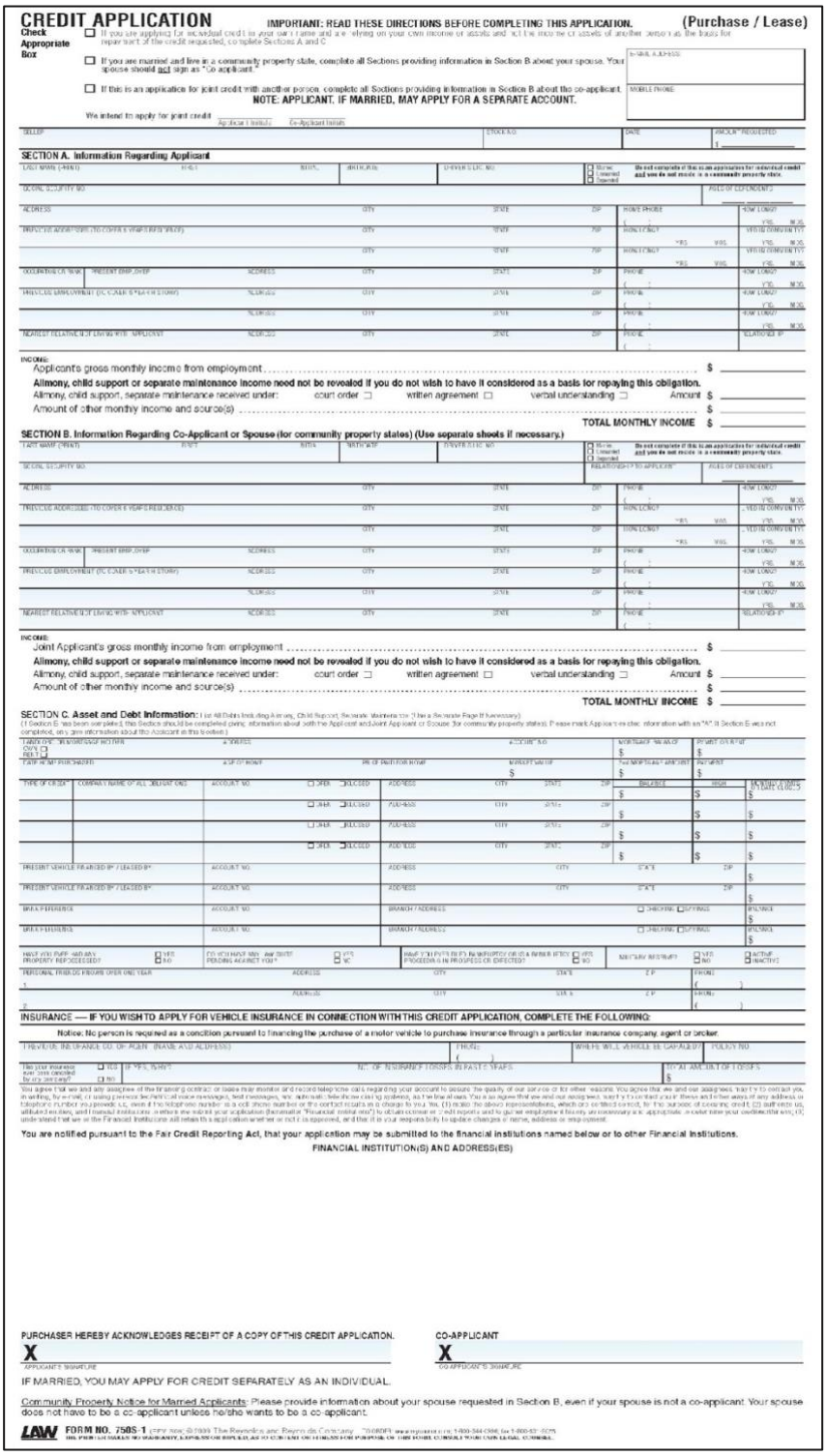
A credit application should be completed with information provided by the applicant, joint applicant, spouse, or other person (as is applicable). One of the best protections for a dealer against claims that dealership personnel were involved in creating inaccurate information is to have the applicant fill out the form in his or her own handwriting. Whether handwritten or typed and printed, dealership personnel should always give the applicant and any other person providing information adequate time to review the filled-out credit application to make sure that it is complete and accurate before he or she signs it.

DEALER TIP: USE CUSTOMER HANDWRITING
Where possible, dealership personnel should have a customer fill out the credit application in the customer's own handwriting.

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Example Form

The following are instructions for completing the major sections of a credit application. Reynolds and Reynolds Credit Application Form (Form 750S-1) is used as an example.



CREDIT APPLICATION — IMPORTANT: READ THESE DIRECTIONS BEFORE COMPLETING THIS APPLICATION. (Purchase / Lease)

Check Appropriate Box

☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Sections A and C

☐ If you are married and live in a community property state, complete all Sections providing information in Section B about your spouse. Your spouse should not sign as "Co-applicant."

☐ If this is an application for joint credit with another person, complete all Sections providing information in Section B about the co-applicant.

NOTE: APPLICANT, IF MARRIED, MAY APPLY FOR A SEPARATE ACCOUNT.

E-MAIL ADDRESS

MOBILE PHONE

We intend to apply for joint credit — Applicant Initials — Co-Applicant Initials

SELLER | STOCK NO. | DATE | AMOUNT REQUESTED $

SECTION A. Information Regarding Applicant

LAST NAME (MAIN) | FIRST | MIDDLE | BIRTH DATE | DRIVER'S LIC. NO. | ☐ Married ☐ Unmarried ☐ Separated — Do not complete if this is an application for individual credit and you do not reside in a community property state.

SOCIAL SECURITY NO. | AGES OF DEPENDENTS

ADDRESS | CITY | STATE | ZIP | HOME PHONE | HOW LONG? | OWN / RENT

PREVIOUS ADDRESS (IF LESS THAN 3 YEARS AT PRESENT) | CITY | STATE | ZIP | HOW LONG? | PREVIOUS OWN / RENT

OCCUPATION OR RANK | PRESENT EMPLOYER | ADDRESS | CITY | STATE | ZIP | PHONE | HOW LONG?

PREVIOUS EMPLOYMENT (IF LESS THAN 3 YEARS AT PRESENT) | ADDRESS | CITY | STATE | ZIP | PHONE | HOW LONG?

NEAREST RELATIVE NOT LIVING WITH APPLICANT | ADDRESS | CITY | STATE | ZIP | PHONE | RELATIONSHIP

INCOME:

Applicant's gross monthly income from employment ..... $

Alimony, child support or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ verbal understanding ☐ Amount $

Amount of other monthly income and source(s) ..... $

TOTAL MONTHLY INCOME $

SECTION B. Information Regarding Co-Applicant or Spouse (for community property states) (Use separate sheets if necessary.)

LAST NAME (MAIN) | FIRST | MIDDLE | BIRTH DATE | DRIVER'S LIC. NO. | ☐ Married ☐ Unmarried ☐ Separated — Do not complete if this is an application for individual credit and you do not reside in a community property state.

SOCIAL SECURITY NO. | RELATIONSHIP TO APPLICANT | AGES OF DEPENDENTS

ADDRESS | CITY | STATE | ZIP | PHONE | HOW LONG? | OWN / RENT

PREVIOUS ADDRESS (IF LESS THAN 3 YEARS AT PRESENT) | CITY | STATE | ZIP | HOW LONG? | PREVIOUS OWN / RENT

OCCUPATION OR RANK | PRESENT EMPLOYER | ADDRESS | CITY | STATE | ZIP | PHONE | HOW LONG?

PREVIOUS EMPLOYMENT (IF LESS THAN 3 YEARS AT PRESENT) | ADDRESS | CITY | STATE | ZIP | PHONE | HOW LONG?

NEAREST RELATIVE NOT LIVING WITH APPLICANT | ADDRESS | CITY | STATE | ZIP | PHONE | RELATIONSHIP

INCOME:

Joint Applicant's gross monthly income from employment ..... $

Alimony, child support or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ verbal understanding ☐ Amount $

Amount of other monthly income and source(s) ..... $

TOTAL MONTHLY INCOME $

SECTION C. Asset and Debt Information: (List All Debts Including Alimony, Child Support, Separate Maintenance That is Separate Page If Necessary)

(If Section B was been completed, this Section should be completed using information about both the Applicant and Joint Applicant or Spouse (for community property states). Please mark Applicant's initials with an "A". If Section B was not completed, only give information about the Applicant in this Section.)

TYPE OF DEBT | COMPANY NAME OF ALL DELIQUENT ONES | ACCOUNT NO. | OPEN ☐ CLOSED ☐ | ADDRESS | CITY | STATE | ZIP | BALANCE | HIGH | MONTHLY PAYMENT / TIMES CLOSED

PRESENT VEHICLE FINANCED BY / LEASED BY* | ACCOUNT NO. | ADDRESS | CITY | STATE | ZIP

PRESENT VEHICLE FINANCED BY / LEASED BY* | ACCOUNT NO. | ADDRESS | CITY | STATE | ZIP

BANK REFERENCE | ACCOUNT NO. | BRANCH / ADDRESS | ☐ CHECKING ☐ SAVINGS | BALANCE

BROKER REFERENCE | ACCOUNT NO. | BRANCH / ADDRESS | ☐ CHECKING ☐ SAVINGS | BALANCE

HAVE YOU EVER HAD ANY PROPERTY REPOSSESSED? ☐ YES ☐ NO | DO YOU HAVE ANY JUDGMENTS PENDING AGAINST YOU? ☐ YES ☐ NO | HAVE YOU EVER FILED A BANKRUPTCY OR IS A PETITION IN BANKRUPTCY PROCEEDING IN PROGRESS OR EFFECTED? ☐ YES ☐ NO | MARITAL STATUS ☐ YES ☐ NO ☐ ACTIVE ☐ INACTIVE

PERSONAL REFERENCE FROM OUR ONE YEAR | ADDRESS | CITY | STATE | ZIP | PHONE

ADDRESS | CITY | STATE | ZIP | PHONE

INSURANCE — IF YOU WISH TO APPLY FOR VEHICLE INSURANCE IN CONNECTION WITH THIS CREDIT APPLICATION, COMPLETE THE FOLLOWING:

Notice: No person is required as a condition pursuant to financing the purchase of a motor vehicle to purchase insurance through a particular insurance company, agent or broker.

PRESENT INSURANCE CO. OR AGENT (NAME AND ADDRESS) | PHONE | WHEN WILL VEHICLE BE CANCELED? | POLICY NO.

Has your insurance ever been canceled for any reason? ☐ YES ☐ NO | IF "YES," WHY? | NO. OF INSURANCE LOSSES IN PAST 5 YEARS | TOTAL AMOUNT OF LOSSES $

You agree that we and any assignee of the financing contract or lease may monitor and record telephone calls regarding your account to assure the quality of our service or for other reasons. You agree that we and our assignees, may try to contact you in writing, by e-mail, or using pre-recorded/artificial voice messages, text messages, and automatic telephone dialing systems, as the law allows. You also agree that we and our assignees, may try to contact you at these and other ways of any address or telephone number you provide us, even if the telephone number is a cell phone number or the contact results in a charge to you. You (1) revoke the above representations, which are entitled solely for the purpose of obtaining credit; (2) authorize us, affiliated entities, and financial institutions to whom we submit your application (hereinafter "Financial Institutions") to obtain consumer credit reports and to gather employment histories as necessary or appropriate, at any time your creditworthiness; (3) understand that we or the Financial Institutions will retain this application whether or not it is approved; and that it is your responsibility to update changes in name, address or employment.

You are notified pursuant to the Fair Credit Reporting Act, that your application may be submitted to the financial institutions named below or to other Financial Institutions.

FINANCIAL INSTITUTION(S) AND ADDRESS(ES)

PURCHASER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS CREDIT APPLICATION.

X _____ APPLICANT'S SIGNATURE

CO-APPLICANT

X _____ CO-APPLICANT'S SIGNATURE

IF MARRIED, YOU MAY APPLY FOR CREDIT SEPARATELY AS AN INDIVIDUAL.

Community Property Notice for Married Applicants: Please provide information about your spouse requested in Section B, even if your spouse is not a co-applicant. Your spouse does not have to be a co-applicant unless he/she wants to be a co-applicant.

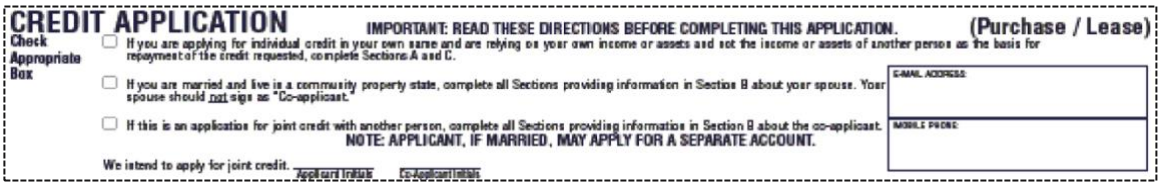
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Top of application

The applicant (and, if applicable, co-applicant) should first answer three "check box" questions at the top of the form.


CREDIT APPLICATION IMPORTANT: READ THESE DIRECTIONS BEFORE COMPLETING THIS APPLICATION. (Purchase / Lease)
Check Appropriate Box
☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Sections A and C.
☐ If you are married and live in a community property state, complete all Sections providing information in Section B about your spouse. Your spouse should not sign as "Co-applicant."
☐ If this is an application for joint credit with another person, complete all Sections providing information in Section B about the co-applicant.
NOTE: APPLICANT, IF MARRIED, MAY APPLY FOR A SEPARATE ACCOUNT.
We intend to apply for joint credit. Applicant Initials Co-Applicant Initials
E-MAIL ADDRESS:
MOBILE PHONE:

The first box should be checked if all of the following are true:

- The applicant is applying for individual credit in his or her own name, AND
- The applicant is not married, AND
- The applicant is not relying on income or assets of another person.

If the first box is checked, then the following must be reflected on the form:

- Only the applicant's signature (and information); and
- No initials on the lines labeled "We intend to apply for joint credit."

The second box should be checked if:

- The applicant is married and lives in a community property state such as California, but is not applying for joint credit with the spouse or any other person.

If the second box is checked, then the following must be reflected on the form:

- Only the applicant's signature;
- Information about an applicant and spouse; and
- No initials on the lines labeled "We intend to apply for joint credit."

The third box should be checked if:

- The applicant is applying for joint credit with another person.

If the third box is checked, then the following must be reflected on the form:

- The signatures of the applicant and co-applicant;
- The initials of the applicant and co-applicant on the lines labeled "We intend to apply for joint credit"; and
- Information about the applicant and co-applicant.

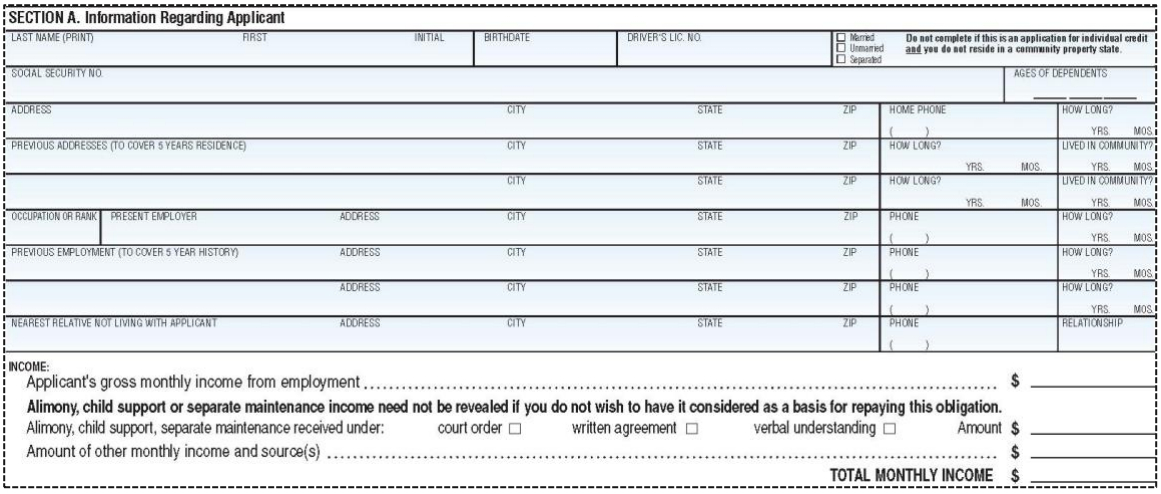
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Lines for the initials of joint applicants

Most co-applicants intend to apply for credit jointly – meaning that the applicants truly want their credit considered jointly from the inception of the credit review process. However, in rare cases creditors, including dealers, are accused of requiring a co-signer. Federal Regulation B, which implements the ECOA, requires affirmative evidence of the customer's intent to submit a joint application.[5] It is therefore very important to obtain the initials of both the applicant and co-applicant on the lines next to the phrase "We intend to apply for joint credit."

Sections A and B – applicant information and income

Sections A and B of the example credit application form are virtually identical, with Section A applicable to the applicant and Section B applicable to the co-applicant or spouse.



SECTION A. Information Regarding Applicant

LAST NAME (PRINT)	FIRST	INITIAL	BIRTHDATE	DRIVER'S LIC. NO.	☐ Married ☐ Unmarried ☐ Separated	Do not complete if this is an application for individual credit and you do not reside in a community property state.
SOCIAL SECURITY NO.						AGES OF DEPENDENTS
ADDRESS		CITY	STATE	ZIP	HOME PHONE ( )	HOW LONG? YRS. MOS.
PREVIOUS ADDRESSES (TO COVER 5 YEARS RESIDENCE)		CITY	STATE	ZIP	HOW LONG? YRS. MOS.	LIVED IN COMMUNITY? YRS. MOS.
		CITY	STATE	ZIP	HOW LONG? YRS. MOS.	LIVED IN COMMUNITY? YRS. MOS.
OCCUPATION OR RANK	PRESENT EMPLOYER	ADDRESS	CITY	STATE ZIP	PHONE ( )	HOW LONG? YRS. MOS.
PREVIOUS EMPLOYMENT (TO COVER 5 YEAR HISTORY)		ADDRESS	CITY	STATE ZIP	PHONE ( )	HOW LONG? YRS. MOS.
		ADDRESS	CITY	STATE ZIP	PHONE ( )	HOW LONG? YRS. MOS.
NEAREST RELATIVE NOT LIVING WITH APPLICANT		ADDRESS	CITY	STATE ZIP	PHONE ( )	RELATIONSHIP

INCOME:

Applicant's gross monthly income from employment ..... $ _____

Alimony, child support or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ verbal understanding ☐ Amount $ _____

Amount of other monthly income and source(s) ..... $ _____

TOTAL MONTHLY INCOME $ _____

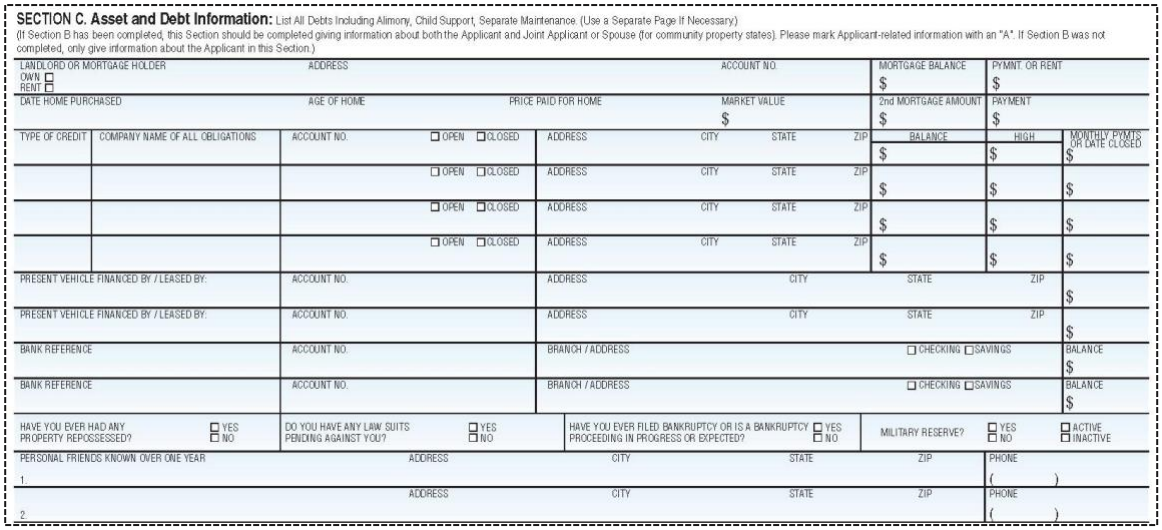
As the form reflects, the applicant is not required to reveal alimony, child support, or separate maintenance income if the applicant does not want those amounts to be considered as a basis for repaying the lease or conditional sale contract obligation. The requested remaining information is self-explanatory.

Section C (first part) – asset and debt information

The first part of Section C of the example credit application form calls for asset and debt information and financing references. It is generally self-explanatory.

[5] 12 CFR § 202.7

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SECTION C. Asset and Debt Information: List All Debts Including Alimony, Child Support, Separate Maintenance. (Use a Separate Page If Necessary.)
(If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Spouse (for community property states). Please mark Applicant-related information with an "A". If Section B was not completed, only give information about the Applicant in this Section.)

LANDLORD OR MORTGAGE HOLDER — ADDRESS — ACCOUNT NO. — MORTGAGE BALANCE — PYMNT. OR RENT
OWN ☐ RENT ☐ — $ — $
DATE HOME PURCHASED — AGE OF HOME — PRICE PAID FOR HOME — MARKET VALUE — 2nd MORTGAGE AMOUNT — PAYMENT
$ — $ — $

TYPE OF CREDIT	COMPANY NAME OF ALL OBLIGATIONS	ACCOUNT NO.		ADDRESS	CITY	STATE	ZIP	BALANCE	HIGH	MONTHLY PYMTS OR DATE CLOSED
			☐ OPEN ☐ CLOSED					$	$	$
			☐ OPEN ☐ CLOSED					$	$	$
			☐ OPEN ☐ CLOSED					$	$	$
			☐ OPEN ☐ CLOSED					$	$	$

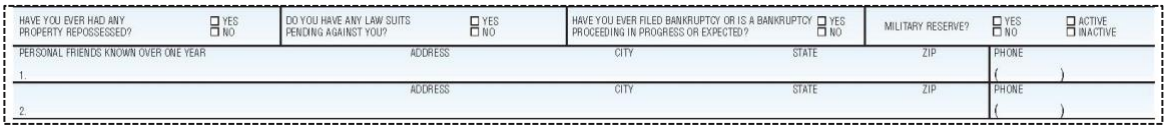
PRESENT VEHICLE FINANCED BY / LEASED BY: — ACCOUNT NO. — ADDRESS — CITY — STATE — ZIP — $
PRESENT VEHICLE FINANCED BY / LEASED BY: — ACCOUNT NO. — ADDRESS — CITY — STATE — ZIP — $
BANK REFERENCE — ACCOUNT NO. — BRANCH / ADDRESS — ☐ CHECKING ☐ SAVINGS — BALANCE $
BANK REFERENCE — ACCOUNT NO. — BRANCH / ADDRESS — ☐ CHECKING ☐ SAVINGS — BALANCE $

HAVE YOU EVER HAD ANY PROPERTY REPOSSESSED? ☐ YES ☐ NO
DO YOU HAVE ANY LAW SUITS PENDING AGAINST YOU? ☐ YES ☐ NO
HAVE YOU EVER FILED BANKRUPTCY OR IS A BANKRUPTCY PROCEEDING IN PROGRESS OR EXPECTED? ☐ YES ☐ NO
MILITARY RESERVE? ☐ YES ☐ NO ☐ ACTIVE ☐ INACTIVE

PERSONAL FRIENDS KNOWN OVER ONE YEAR	ADDRESS	CITY	STATE	ZIP	PHONE
1.					( )
2.					( )

Section C (second part) – credit questions

Immediately following the bank references in Section C, the credit application form requests checkbox responses to a number of questions. This information can help evaluate credit risk. Also, the applicant's knowledge of the correct answers to these questions can help verify the identity of the applicant.

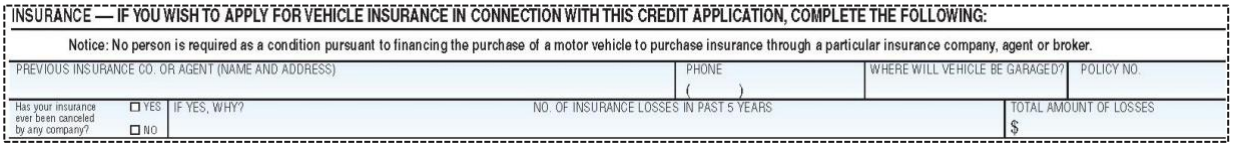


HAVE YOU EVER HAD ANY PROPERTY REPOSSESSED? ☐ YES ☐ NO
DO YOU HAVE ANY LAW SUITS PENDING AGAINST YOU? ☐ YES ☐ NO
HAVE YOU EVER FILED BANKRUPTCY OR IS A BANKRUPTCY PROCEEDING IN PROGRESS OR EXPECTED? ☐ YES ☐ NO
MILITARY RESERVE? ☐ YES ☐ NO ☐ ACTIVE ☐ INACTIVE

PERSONAL FRIENDS KNOWN OVER ONE YEAR	ADDRESS	CITY	STATE	ZIP	PHONE
1.					( )
2.					( )

Insurance section

Unless the dealership and individual dealership personnel are licensed to transact insurance, and the customer wishes to purchase insurance through the dealership, this section should not be completed.



INSURANCE — IF YOU WISH TO APPLY FOR VEHICLE INSURANCE IN CONNECTION WITH THIS CREDIT APPLICATION, COMPLETE THE FOLLOWING:

Notice: No person is required as a condition pursuant to financing the purchase of a motor vehicle to purchase insurance through a particular insurance company, agent or broker.

PREVIOUS INSURANCE CO. OR AGENT (NAME AND ADDRESS) — PHONE ( ) — WHERE WILL VEHICLE BE GARAGED? — POLICY NO.

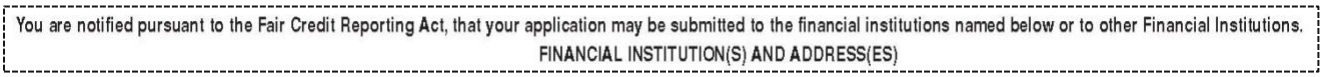
Has your insurance ever been canceled by any company? ☐ YES ☐ NO — IF YES, WHY? — NO. OF INSURANCE LOSSES IN PAST 5 YEARS — TOTAL AMOUNT OF LOSSES $

Names of finance and lease companies

The names and addresses of the financial institutions to which the credit application will be submitted should be listed in the section of the credit application form with the heading "You are notified pursuant to the Fair Credit Reporting Act, that your application may be submitted to the financial institutions named below or to other Financial Institutions." This is necessary because most retail dealer agreements with finance companies require the dealer to disclose the finance company's name and address to the consumer in the credit application. Under

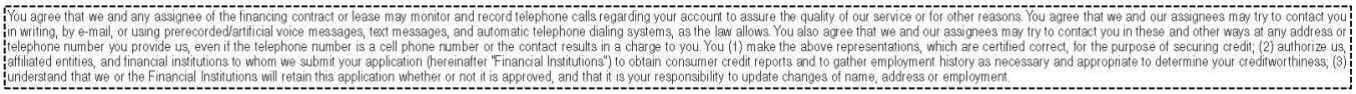
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the FCRA, this allows the finance company to report credit decisions back to the dealer without being considered a credit-reporting agency.[6]


You are notified pursuant to the Fair Credit Reporting Act, that your application may be submitted to the financial institutions named below or to other Financial Institutions.
FINANCIAL INSTITUTION(S) AND ADDRESS(ES)

Applicant authorizations

The most important authorization given in the credit application is permission for the dealer and financial institutions to obtain the applicant's credit report. In this section, the applicant also authorizes the recording of all telephone calls made regarding the applicant's account. The dealer and financial institution are further authorized to contact the applicant in writing, by email, pre-recorded/artificial voice messages, text messages, and automatic dialing systems as permitted by law.


You agree that we and any assignee of the financing contract or lease may monitor and record telephone calls regarding your account to assure the quality of our service or for other reasons. You agree that we and our assignees may try to contact you in writing, by e-mail, or using prerecorded/artificial voice messages, text messages, and automatic telephone dialing systems, as the law allows. You also agree that we and our assignees may try to contact you in these and other ways at any address or telephone number you provide us, even if the telephone number is a cell phone number or the contact results in a charge to you. You (1) make the above representations, which are certified correct, for the purpose of securing credit; (2) authorize us, affiliated entities, and financial institutions to whom we submit your application (hereinafter "Financial Institutions") to obtain consumer credit reports and to gather employment history as necessary and appropriate to determine your creditworthiness; (3) understand that we or the Financial Institutions will retain this application whether or not it is approved, and that it is your responsibility to update changes of name, address or employment.

Applicant signature

Once a credit application is completed, the applicant (and joint applicant/spouse/other person as applicable) should be asked to sign and date the credit application. A copy of the signed credit application should be provided to the applicant (and joint applicant/spouse/other person as applicable) prior to the time a vehicle is delivered.[7] If there is a joint applicant, dealership personnel should make sure that the applicant and joint applicant have initialed the joint applicant lines near the top of the form.


PURCHASER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS CREDIT APPLICATION.
X
APPLICANT'S SIGNATURE
CO-APPLICANT
X
CO-APPLICANT'S SIGNATURE
IF MARRIED, YOU MAY APPLY FOR CREDIT SEPARATELY AS AN INDIVIDUAL.
Community Property Notice for Married Applicants: Please provide information about your spouse requested in Section B, even if your spouse is not a co-applicant. Your spouse does not have to be a co-applicant unless he/she wants to be a co-applicant.

Credit decisions

The ECOA (and its Regulation B) and the FCRA require certain steps to be taken to notify the applicant as to the disposition of the applicant's credit request. These include adverse action notices and incomplete application notices. (For more detail, see Chapter 7, Credit Decisions & Adverse Action Notices).

Credit applications and privacy

Credit applications implicate privacy concerns more than any other documentation prepared or received by dealers, and must be handled with this in mind.

[6] 15 U.S.C. § 1681a(d)(2)(C)
[7] Civil Code § 2981.9

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GLB Act privacy policy

At the same time a credit application is signed by an applicant (and joint applicant/spouse/or other person as applicable), each person signing the contract should be given a copy of the dealership's privacy policy. (See Chapter 1, GLB Privacy Notices, for further information on this topic).

Privacy implementation and information safeguards

Extreme care is required in handling and storing credit applications because of the highly sensitive personal information contained in those forms. This requires strict compliance with the dealership's safeguards policy applicable to the nonpublic personal information of its customers. (See Chapter 51, Safeguarding Computerized Consumer Data, for further information on this topic).

Accuracy and credit applications

It is very important that credit applications reflect accurate information. Severe fines and even jail await those who would deliberately send an inaccurate credit application to a bank or finance company to induce the approval of credit. **Dealership personnel should not insert, or allow customers to insert, false information in a credit application.**

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CHAPTER 6: CREDIT REPORTS

Knowing how to successfully obtain and use credit reports is essential to the F&I function. This chapter discusses compliance issues pertaining to credit reports.

Legal background

Extensive legal requirements under the federal Fair Credit Reporting Act (FCRA) and related California laws apply to obtaining and handling consumer credit reports. An individual's credit report should be obtained only when there is a legally recognized permissible purpose, which is best satisfied by obtaining the written authorization of the individual.[1] Credit application forms typically contain a space for this authorization.

Because of the highly sensitive personal information contained in credit reports, they merit the highest protection under dealership information safeguards policies. In addition, reasonable steps to verify the identity of the individual are necessary before and after the credit report is obtained under laws designed to curb identity theft.

Requirements to obtain a credit report

It is illegal to obtain a credit report on an individual without a legally recognized permissible purpose or express authorization from the applicant. Although a permissible purpose can exist when the dealership has a legitimate business need for a credit report in connection with a transaction initiated by an individual, the safest approach is to first secure the written consent of the individual involved (for example, have the individual sign a credit application which specifically authorizes the dealership to obtain a credit report). An individual's electronic authorization (for example, by email) may be sufficient to constitute written authorization for a dealership to obtain a credit report if it represents a trustworthy record that can be reproduced and retained by the dealership.

Credit reports should not be obtained in the following situations without the customer's express written authorization – preferably supported by a logical reason for pulling the report[2]:

- The customer simply wants to take a test drive;
- The customer is paying cash;
- The customer asks general questions about financing; or
- Dealership personnel want to obtain information for negotiating purposes.

DEALER TIP: TELEPHONE CREDIT APPLICATIONS RISKY

Pulling a bureau report in reliance on a telephone-only credit application or consent is risky. The best practice in such situations is to obtain a signed authorization by email or fax.

Duties triggered by pulling a credit report

When obtaining a credit report, dealership personnel must be prepared to collect certain identifying information (from at least three categories about the subject individual) that matches information maintained by the credit

[1] 15 U.S.C. § 1681b(a); Civil Code § 1785.11(a)
[2] FTC Advisory Opinion Letter to Texas Automobile Dealers Association dated February 11, 1998

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reporting agency.[3] The categories of identifying information that may be collected include, but are not limited to: first and last name, month and date of birth, driver's license number, place of employment, current residence address, previous residence address, and social security number. The customer's mother's maiden name should not be obtained for this purpose. Dealership personnel should also be prepared to certify in writing that there was inspection of a photo ID of the individual at the time he or she made an in-person application for credit at the dealership.[4] (See Chapter 2, Red Flags Rule/Verifying Customer Identity).

Red flags, Address Discrepancy rules, and alerts shown on the credit report

Dealership personnel obtaining credit reports must be aware that certain situations relating to possible identity theft may arise and require further action on their part. See Chapter 2, Red Flags Rule/Verifying Customer Identity, for more details on complying with the Red Flags and Address Discrepancy rules and verifying customer identity in the face of fraud alerts and other alerts appearing on a credit report.

Records retention

Any credit report obtained by dealership personnel in connection with a credit application which results in a lease or conditional sale transaction should be retained by the dealer for a period of not less than 7 years.[5] If a lease or conditional sale contract transaction does not occur, the credit report should be retained for at least 25 months, although it is prudent for a dealer to retain such credit reports for 5 years.[6] If a dealer is involved in any kind of investigation or legal action regarding an applicant, the credit report and related records should be retained indefinitely.

Credit score disclosure

Dealers who obtain a credit score from a credit reporting agency for use in connection with an application for the purchase or lease of a vehicle for personal, family, or household use must give the applicant, prior to the sale or lease of a vehicle, a separate written credit score notice meeting state and federal requirements. (See Chapter 23, Credit Score Disclosure/Risk-Based Pricing Rule).

Allowing customer to have a copy of the credit report

Credit reporting agency subscriber contracts have historically contained provisions that limited a subscriber's ability to share credit report contents with the customer. In the wake of various consumer finance laws allowing consumers the right to obtain a copy of their credit report, these limitations and their enforcement are not as prominent as they once were. (See Chapter 7, Credit Decisions & Adverse Action Notices).

[3] Civil Code § 1785.14(a)(1)
[4] Civil Code § 1785.14(a)(2)
[5] Civil Code § 2984.5
[6] 12 CFR § 202.12

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Privacy implementation and information safeguards

Vigilant care is required in handling and storing credit reports because of the highly sensitive personal information they contain. This care should include strict compliance with the dealership's safeguard policy applicable to the nonpublic personal information of its customers. (See Chapter 51, Safeguarding Computerized Consumer Data).

Medical information regulations

The federal FACT Act limits the right of creditors to access and use information about an applicant's medical condition or treatment.[7] The scope of medical information covered by these rules is very broad. Dealers and other creditors are generally prohibited from asking about an applicant's medical condition when determining eligibility or continued eligibility for credit. A consumer's medical condition should never be considered when making credit decisions.

The regulations recognize that certain minimal medical information may be obtained inadvertently, such as the listing of a medical debt on a credit application or credit report, or in conversation with the applicant. The dealer or other creditor may consider medical debt or income as part of a debt-income analysis, but only to the same extent that it routinely considers non-medical debt and income in similar amounts.

[7] 15 U.S.C. § 1681b(g)(2)

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CHAPTER 7: CREDIT DECISIONS & ADVERSE ACTION NOTICES

Dealers must provide a notice advising a credit applicant of a credit turndown or other adverse action as discussed in this chapter.

Legal background

Notices advising a customer of a credit turndown or other adverse credit action are required under federal law (by the Equal Credit Opportunity Act (ECOA), the Fair Credit Reporting Act (FCRA), and California law (by both the Consumer Credit Reporting Agencies Act and the Holden Credit Denial Disclosure Act)).[1] Each law imposes content or procedural requirements for these notices, referred to as "adverse action notices." These notices may either provide the specific reason for credit denial or inform the customer of the name of the person or office they can contact to request the specific reason for the credit turndown.

Federal law

The adverse action notice is primarily a creature of federal law. The California statutes mentioned above generally copy from federal law and do not add additional substantive requirements. Those statutes do, however, provide California governmental agencies and California courts their own jurisdiction over any perceived failure to properly give adverse action notices when required.

Compliance – adopt a cautious approach

In the past, the guidance given to dealers varied regarding whether they needed to give their own adverse action notices to be compliant, or whether that duty falls upon the finance company that refused to purchase a contract. More recent court decisions have found that dealers have an obligation to provide adverse action notices when an applicant is denied credit for a variety of reasons, including the dealer's role in setting the final APR for a contract, spot delivery of a vehicle, rescission of a transaction because a contract cannot be assigned, and the signature on the retail installment sale contract.[2]

A question has also arisen concerning whether a dealer must send its own adverse action notice if a finance source to whom the dealer sent the customer's application gives an adverse action notice to the customer. In other words, can a dealer rely on a notice given by the finance source to satisfy its own requirements? A small number of recent court decisions have concluded that a dealer's duty to provide an adverse action notice is independent from the duty of a finance company.[3] While some argue that a finance company can send an adverse action notice *on a dealer's behalf*, dealer agreements with captive and other finance sources continue to be drafted more tightly for the benefit of the finance source. Accordingly, obtaining binding and reliable

[1] 15 U.S.C. §§ 1681m and 1691(d); Civil Code §§ 1785.20 and 1787.2
[2] Treadway v. Gateway Chevrolet Oldsmobile Inc. (2004) 362 F.3d 971
[3] Tyson v. Sterling Rental, Inc. (2016) 836 F. 3d 571

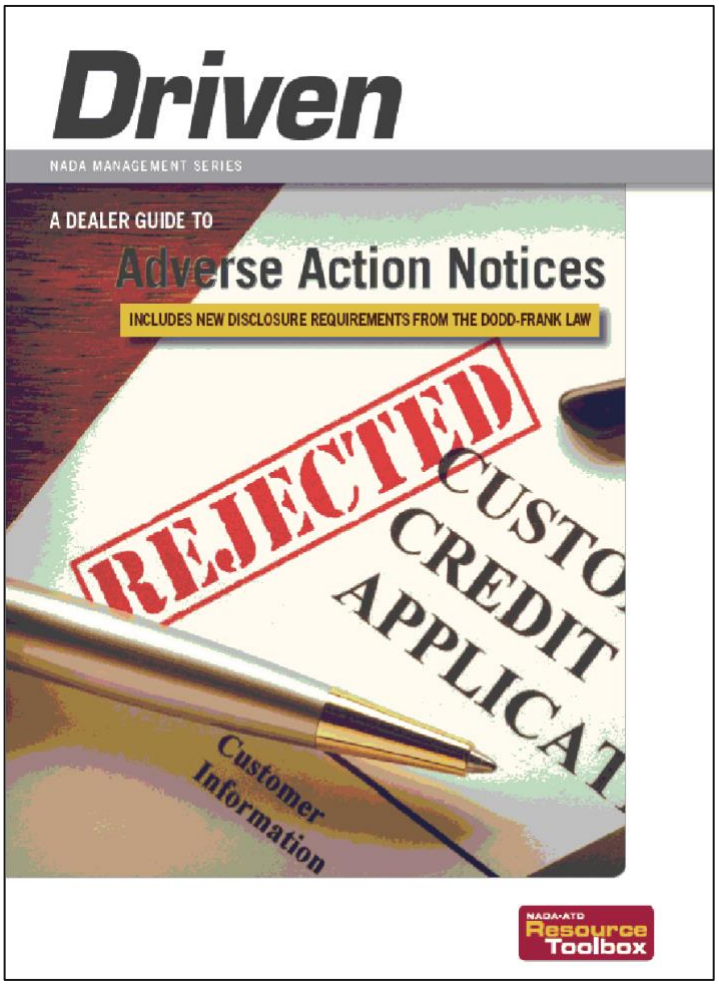
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commitments from finance sources to send legally compliant adverse action notices on behalf of dealers is becoming increasingly difficult.

Because California dealers engage in many of the activities cited by courts as reasons why dealers may need to send adverse action notices, dealers should take a cautious approach and consult legal counsel regarding questions in this area. The National Automobile Dealers Association (NADA) has extensively studied this subject and has developed a guide entitled "A Dealer Guide to Adverse Action Notices" that helps dealers understand issues relevant to preparing a reliable adverse action compliance program.

NADA Management Guide: "A Dealer Guide to Adverse Action Notices"

The guide, which is not intended as legal advice, may be accessed by NADA members (login required) at www.nada.org.

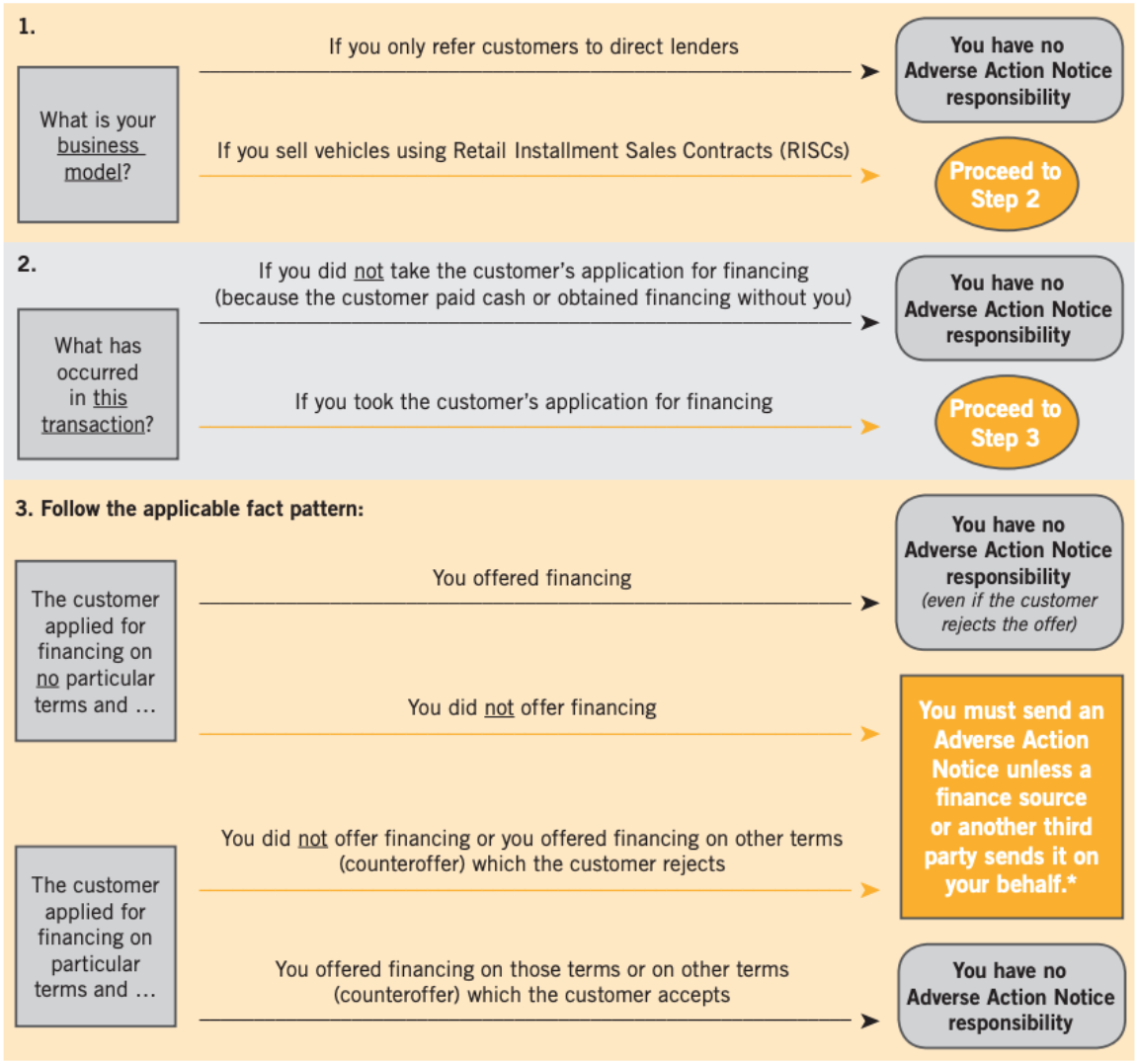


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What triggers the notice – NADA Guide flowchart

The NADA Guide includes an excellent flowchart that takes dealership personnel through the process of determining when an adverse action notice needs to be sent. With NADA's permission, the flowchart appears below.

Appendix A: When Do I Need To Send An Adverse Action Notice?



* An Adverse Action Notice sent on your behalf must include, among other things, your name and address and either your specific reasons for the action taken or a disclosure of the customer's right to a statement of your specific reasons if requested within 60 days. (See Section V.)

The foregoing chart is offered for informational purposes only and is not intended as legal advice. As the length of this guide demonstrates, the full range of adverse action notice considerations is too extensive to fully summarize on one page. Contact your attorney concerning your adverse action notice compliance responsibilities.

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Content of the adverse action notice

The content of an adverse action notice is dictated by both the ECOA and, if a credit report or information obtained from a third party other than a credit reporting agency played a part in the credit decision, the FCRA.

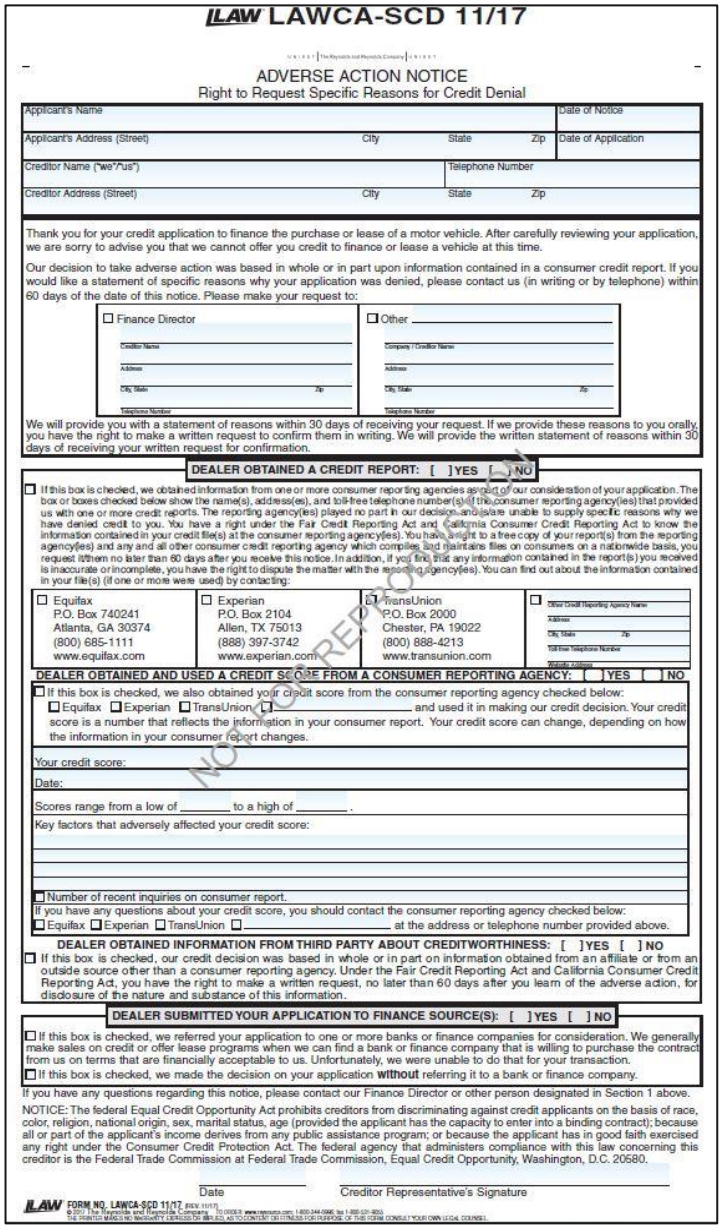
If a credit score was involved in the decision, the Dodd-Frank Act requires further disclosures in the notice.[4] These disclosures include:

- The consumer's credit score;
- The date of the credit score;
- The range of possible credit scores (taking into account the credit score model used);
- The four key reasons that adversely impacted the credit score (five reasons if one reason is the number of inquiries made

regarding the credit report); and

- The name of the entity (or person) providing the credit score.

Given the added complexities of the disclosures required by the Dodd-Frank Act, many dealers have contracted with credit reporting agencies or other vendors to generate adverse action notices as part of a credit services package. Dealers should carefully consider such an arrangement and, as appropriate, conduct a review of the process and form of notice being provided and consult legal counsel regarding questions.



LAWCA-SCD 11/17

ADVERSE ACTION NOTICE
Right to Request Specific Reasons for Credit Denial

Applicant's Name | Date of Notice
Applicant's Address (Street) | City | State | Zip | Date of Application
Creditor Name ("we"/"us") | Telephone Number
Creditor Address (Street) | City | State | Zip

Thank you for your credit application to finance the purchase or lease of a motor vehicle. After carefully reviewing your application, we are sorry to advise you that we cannot offer you credit to finance or lease a vehicle at this time.

Our decision to take adverse action was based in whole or in part upon information contained in a consumer credit report. If you would like a statement of specific reasons why your application was denied, please contact us (in writing or by telephone) within 60 days of the date of this notice. Please make your request to:

☐ Finance Director ☐ Other

We will provide you with a statement of reasons within 30 days of receiving your request. If we provide these reasons to you orally, you have the right to make a written request to confirm them in writing. We will provide the written statement of reasons within 30 days of receiving your written request for confirmation.

DEALER OBTAINED A CREDIT REPORT: [ ] YES [ ] NO

☐ If this box is checked, we obtained information from one or more consumer reporting agencies as part of our consideration of your application. The box or boxes checked below show the name(s), address(es), and toll-free telephone number(s) of the consumer reporting agency(ies) that provided us with one or more credit reports. The reporting agency(ies) played no part in our decision and is/are unable to supply specific reasons why we have denied credit to you. You have a right under the Fair Credit Reporting Act and California Consumer Credit Reporting Act to know the information contained in your credit file(s) at the consumer reporting agency(ies). You have a right to a free copy of your report(s) from the reporting agency(ies) and any and all other consumer credit reporting agency which compiles and maintains files on consumers on a nationwide basis, you request it/them no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report(s) you received is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency(ies). You can find out about the information contained in your file(s) (if one or more were used) by contacting:

☐ Equifax P.O. Box 740241 Atlanta, GA 30374 (800) 685-1111 www.equifax.com
☐ Experian P.O. Box 2104 Allen, TX 75013 (888) 397-3742 www.experian.com
☐ TransUnion P.O. Box 2000 Chester, PA 19022 (800) 888-4213 www.transunion.com
☐ Other Credit Reporting Agency Name / Address / City, State Zip / Toll-free Telephone Number / Website Address

DEALER OBTAINED AND USED A CREDIT SCORE FROM A CONSUMER REPORTING AGENCY: [ ] YES [ ] NO

☐ If this box is checked, we also obtained your credit score from the consumer reporting agency checked below:
☐ Equifax ☐ Experian ☐ TransUnion ☐ _____ and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score:
Date:
Scores range from a low of _____ to a high of _____.
Key factors that adversely affected your credit score:

☐ Number of recent inquiries on consumer report.

If you have any questions about your credit score, you should contact the consumer reporting agency checked below:
☐ Equifax ☐ Experian ☐ TransUnion ☐ _____ at the address or telephone number provided above.

DEALER OBTAINED INFORMATION FROM THIRD PARTY ABOUT CREDITWORTHINESS: [ ] YES [ ] NO

☐ If this box is checked, our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act and California Consumer Credit Reporting Act, you have the right to make a written request, no later than 60 days after you learn of the adverse action, for disclosure of the nature and substance of this information.

DEALER SUBMITTED YOUR APPLICATION TO FINANCE SOURCE(S): [ ] YES [ ] NO

☐ If this box is checked, we referred your application to one or more banks or finance companies for consideration. We generally make sales on credit or offer lease programs when we can find a bank or finance company that is willing to purchase the contract from us on terms that are financially acceptable to us. Unfortunately, we were unable to do that for your transaction.
☐ If this box is checked, we made the decision on your application **without** referring it to a bank or finance company.

If you have any questions regarding this notice, please contact our Finance Director or other person designated in Section 1 above.

NOTICE: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission at Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Date | Creditor Representative's Signature

LAW FORM NO. LAWCA-SCD 11/17 (REV. 11/17)

NOT A CREDIT REPORT

For dealers who typically engage in three-party financing, the NADA Guide outlines a very reliable compliance approach that involves a dealer giving the dealer's own adverse action notice to all customers who are denied credit – even where the application was submitted to a finance source that turned down the deal and sent its own adverse action notice to the customer. As discussed previously, dealers can satisfy their adverse action notification requirements by providing a disclosure containing the precise reason that the applicant was denied credit (long form notice), or a notice that provides required disclosures and directs the applicant to a contact that will provide the specific reason for denying credit (simplified notice).

[4] 12 U.S.C. § 5301 et seq.

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Reynolds' simplified Adverse Action Notice Form

The Reynolds and Reynolds Adverse Action Notice Form (Form LAWCA-SCD) shown here is a commercially available simplified notice that can be used in conjunction with a compliance program of the type discussed in the NADA Guide. This form provides for the applicant to contact the dealership's finance director to obtain a statement of reasons for the denial of an extension of credit.

Regarding adverse action compliance policy

In connection with developing an adverse action compliance policy, dealers and dealership personnel should carefully review the NADA Guide and establish a documented procedure and policy for completing and transmitting the form, including the designation of a manager in charge of the adverse action notice process.

Delivery of notice

There is no required method for delivering an adverse action notice to a customer. Personal delivery, regular mail, or fax are all acceptable methods of delivery. Electronic delivery is also acceptable, but only if the dealer first obtains consent from the customer to receive the notice electronically.

After the simplified Adverse Action Notice Form is sent

Dealers must realize that the simplified adverse action notice tells the customer that he or she has 60 days within which to request a "statement of reasons." Dealers must therefore be prepared to respond to any such request, oral or written. The NADA Guide provides insight to dealers on how to properly prepare for and follow up on any request for a statement of reasons.

Deadline for giving the notice

Any required adverse action notice, whether using the simplified form or otherwise, must be sent to the consumer within 30 days of the dealership's receipt of a completed credit application.[5]

Credit approved, application abandoned

Dealership personnel may receive a credit application from an applicant who leaves the dealership premises before concluding a transaction and before the dealership receives a decision from a finance source. In such a situation, if the credit application is approved and the applicant, although expected to, does not return to the dealership or make a further inquiry as to the status of the credit application within 30 days, dealership personnel may treat the credit application as withdrawn and the dealership has no further obligation to notify the applicant.[6]

Incomplete applications

If an applicant's credit application is incomplete and does not contain sufficient information to make a credit decision, within 30 days of receiving the application the dealer must either send an adverse action notice denying the application or a "notice of incompleteness."[7] If the dealer elects to send a notice of incompleteness, the

[5] 12 CFR § 1002.9
[6] 12 CFR § 1002.9(e)
[7] 12 CFR § 1002.9(c)

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following three items must be included in the notice: (1) the additional information needed; (2) a reasonable date (usually 30 days) by which the applicant must provide the missing information; and (3) a statement informing the applicant that the credit application will not be considered unless the missing information is supplied by that date. In the event the customer fails to timely provide the missing information, the dealer is not obligated to send an adverse action notice.[8] If the applicant supplies the missing information by the designated date, the dealer must then take action on the application and provide the required notice of any credit turndown or other adverse action.

Rescission of contract after spot delivery

To maintain a bright-line compliance profile, an adverse action notice should be given to the customer when a dealer elects to rescind a sale or lease of a vehicle that had been spot-delivered because an acceptable finance source cannot be found. The decision to rescind in these circumstances can be considered an adverse action in and of itself. However, if instead of a completed rollback of the transaction a rewritten contract with terms more favorable to the customer is voluntarily signed after the notice of rescission was issued, it can be argued that the rewritten contract constituted an accepted counteroffer, making it unnecessary to give an adverse action notice. On the other hand, if the rewritten contract does not have terms more favorable to the customer, then an adverse action notice should be given.

Records retention

Dealership personnel should make sure that copies of all adverse action notices given by the dealer are retained for at least 25 months, although it is prudent for a dealer to retain such records for 5 years.[9] (See Chapter 8, Retention of Credit Records). If a dealer is involved in any kind of investigation or legal action regarding an applicant, the related records should be retained indefinitely.

Risk-based pricing notice

As discussed in Chapter 23, Credit Score Disclosure and Risk-Based Pricing Rule, federal law requires dealers to provide a notice in situations where credit is provided on less favorable financing terms than typically available.[10]

Car Buyer's Bill of Rights Credit Score Disclosure

Also discussed in Chapter 23 is a California law that requires dealers to provide a notice when obtaining a credit score from a credit reporting agency for use in connection with an application for the purchase or lease of a motor vehicle for personal, family, or household use.[11] Specifically, the dealer must give the applicant, prior to the sale or lease of a vehicle, a separate written credit score notice. This requirement applies whether or not credit is actually extended.

[8] 12 CFR § 1002.9(c)(2)
[9] 12 CFR § 202.12
[10] 15 U.S.C. § 1681m(h)(1)
[11] Vehicle Code § 11713.20

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CHAPTER 8: RETENTION OF CREDIT RECORDS

Requirements addressed in this chapter concern the length of time credit records must be retained by the dealership.

Legal background

Credit applications, credit reports, and related documents are subject to specific recordkeeping requirements under federal and California law, in addition to general laws applicable to dealers concerning the creation, maintenance, and storage of business records.[1]

Credit records to be retained

The record retention rules discussed in this chapter require that copies of the following documents be retained:

- Any credit application,
- Any credit report,
- Adverse action notices,
- Other written notifications by the dealer to the applicant (for example, credit score disclosure notices), and
- Written statements from the applicant alleging credit discrimination or other violations of Regulation B.

Additionally, if a lease or credit sale is completed, the following documents should also be retained:

- All documents (including any of the above) relied upon to determine creditworthiness, including W2s, tax returns, payroll stubs, phone/utility bills, etc. and
- If the conditional sale contract is assigned, a copy of the terms of that sale, assignment, or transfer.

Important to retain other records

Before tossing out records not mentioned above, dealers need to be aware that records typically found in a deal jacket must be kept and maintained to comply with other applicable retention laws. A DMV regulation provides that records maintained in the regular course of business directly concerned with the purchase, sale, rental, or lease of a vehicle must be retained by the dealer for a period of not less than 3 years.[2]

A related regulation provides flexibility as to how dealers maintain these records. Specifically, after 90 days, a dealer is authorized to move business records to an offsite storage location in California where they may be maintained for the remainder of the 3-year period.[3] Additionally, the regulation authorizes dealers to scan the

[1] 12 CFR § 202.12; Civil Code § 2984.5
[2] 13 CCR § 272.00
[3] 13 CCR § 272.02

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records at any time and acknowledges that the scanned records satisfy the record retention requirements applicable after the first 90 days, if the following standards are met:

- The electronic copy created is in a non-alterable format;
- The electronic copy is retained in a format that permits the document to be readily accessible and retrievable;
- The electronic copy is a legible, complete, and accurate reproduction of the original business record;
- The electronic copy is retained at an on-site or off-site location in a manner that permits the business record to be retrieved upon 3 business days' notice; and
- Any access device, server, network device, or any internal or external storage medium used for storing the electronic copy or backup copy has access controls and physical security measures to protect the records from unauthorized access, viewing, or alteration.

If a dealer complies with these standards, the original paper records may be disposed of after the initial 90-day period lapses. See discussion in Chapter 9 regarding disposal of records containing personal information.

Dealers must be aware that other record retention requirements based upon state and federal laws may require records to be retained beyond the 3 years mandated by the DMV. A dealer should always consider retaining records for a longer period if those records could help the dealer defend against claims and lawsuits that may arise in the future. For a more detailed discussion on retention requirements, see CNCDA's Dealership Operations Guide at Chapter 13: Records Retention.

If no sale or lease, retain for twenty-five months

If a credit application is taken, but a lease or installment sale does not occur, a dealer must retain the documents for at least 25 months under federal law.[4] The 25 months should be measured from the date the application is submitted or, if an adverse action notice is required, the date the applicant is given the adverse action notice. However, it is recommended that the documents be retained for at least 5 years. Any files related to a pending investigation or legal action should be retained indefinitely.

If sale or lease completed, retain for seven years

Dealers must retain for 7 years or the length of the conditional sale contract, whichever is longer, (1) a copy of the conditional sale contract; (2) all documents relied upon by the dealership to determine creditworthiness, including credit reports, documents showing a credit score, W2s, tax returns, payroll stubs, phone/utility bills, etc.; and (3) if the conditional sale contract is sold, assigned, or otherwise transferred, a copy of the terms of that sale, assignment, or transfer.[5] However, it is recommended that all documents relied upon by the dealership to determine creditworthiness, including credit applications, be retained for at least 10 years. Even though the 7-year record retention law is not directly applicable to leases, the simplest and safest compliance policy for a dealer is to retain similar lease documentation for the same 7-year period.

[4] 12 CFR § 202.12
[5] Civil Code § 2984.5

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CHAPTER 9: DISPOSAL OF CREDIT RECORDS

This chapter discusses legal requirements for securely disposing of credit records.

Legal background

Regulations issued by the FTC (as part of the FACT Act) impose requirements for the proper disposal of all credit reports or documents or computer records that contain information obtained from a credit report[1]. In addition, a California law imposes requirements for the proper disposal of not only credit reports, but also of all documents or computer records containing nonpublic personal information such as customer addresses, telephone numbers, social security numbers, driver's license numbers, e-mail addresses, medical information, and account and credit information (see glossary for more information)[2]. Generally, these laws require such documents to be destroyed at the time of their disposal.

Destroying records when disposing of them

California law requires records with nonpublic personal information to be destroyed at the time of their disposal by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means. It is important to remember that this applies in every situation where such records are being disposed of or abandoned, such as the following:

- Disposal of paper records;
- Disposal of computers or their storage media;
- Reassignment of computers or media to other uses;
- Disposal of "scratch papers" with nonpublic personal information; and
- Disposal of "work copies" of deal documents.

Establishing a document destruction policy and training

The FTC regulations require dealers to take "reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal."[3] The FTC suggests that this standard requires formal dealership policies and procedures regarding disposal along with training of employees on such policies and procedures. The preferred means of complying with these requirements is to incorporate such record destruction policies into the dealership's GLB Safeguards Policy. (See Chapter 51, Safeguarding Computerized Consumer Data).

[1] 16 CFR § 682.1 et seq.
[2] Civil Code § 1798.81
[3] 16 CFR § 682.3(a)

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Use of third-party destruction companies

The FTC notes that if a third-party records destruction company is used, a due diligence investigation should first be conducted to confirm that the company's operations will comply with the regulations.

Lack of knowledge no excuse

The FTC has made it clear that lack of knowledge that materials contain covered information is not an excuse for failing to properly dispose of the materials.

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CHAPTER 10: SALES TO MILITARY MEMBERS

This chapter discusses dealer compliance issues regarding vehicle sales to active military service personnel, their spouses and dependents.

Legal background

A new California law effective January 1, 2023 voids a security interest in a motor vehicle if the vehicle is purchased by an active-duty member of the military and the loan also funds a "credit insurance product or credit-related ancillary product."[1]

Avoid sale of GAP waivers and debt cancellation agreements to active-duty service members

While the terms "credit insurance product" and "credit-related ancillary product" in the newly enhanced California law are not defined, this language is reasonably interpreted to include GAP waivers[2] and debt cancellation agreements[3] in sales contracts involving active-duty service members. Thus, it is recommended that dealers refrain from offering GAP waivers and debt cancellation agreements to active military service personnel. See the discussion in Chapter 19, GAP Waivers.

Identification of a buyer's covered member status

The prohibition on the sale of a "credit insurance product" or "credit-related ancillary product" noted above applies to a "covered member" under the federal Military Lending Act. The term "covered member" means a member of the armed forces who is— (A) on active duty under a call or order that does not specify a period of 30 days or less; or (B) on active Guard and Reserve Duty.[4] With input from legal counsel, dealers may consider adopting procedures to identify, at the beginning of a vehicle sales transaction, whether a buyer a "covered member" under the new law and to avoid offering credit products that trigger the protections of the new law.[5]

The Department of Defense (DOD) maintains a tool to determine a person's status as an active duty servicemember. The DOD's Servicemembers Civil Relief Act (SCRA) website allows users to conduct such a search. You can access the website here: https://scra.dmdc.osd.mil/scra/. Dealers should also note that the DOD also maintains a website on the Military Lending Act (MLA), which allows users to determine whether a person is a covered borrower under the MLA. MLA covered borrowers include "covered members," as well as their spouses and dependents. Therefore, the MLA search tool may be overinclusive for the purposes of determining whether California law imposes a restriction on the sale of GAP waiver.

[1] Military and Veterans Code § 408.1(c)
[2] Civil Code § 2981(t)
[3] Insurance Code § 1758.99(h)(2)(A)
[4] 10 U.S.C. § 987(i)(1); Military and Veterans Code § 408.1(a)
[5] 10 U.S.C. § 987(i)(1); Military and Veterans Code § 408.1(a)

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PART B. DEAL NEGOTIATION

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CHAPTER 11: TRADE-IN/LEASE RETURN ISSUES

This chapter discusses compliance issues relating to trade-in vehicles, including negative equity.

Legal background

Often, a dealer's handling of a customer's trade-in vehicle is key to successfully structuring a sale or lease transaction. This aspect of a transaction raises a number of legal issues deserving additional compliance attention. Initially, the condition of the customer's vehicle and its evaluation is critical in determining if it is an acceptable trade-in and whether "negative equity" is involved. This term is defined as any prior credit or lease balance on a trade-in that exceeds the combined value of the trade-in vehicle and any downpayment. The handling of negative equity by dealers has received considerable legal scrutiny and has been the subject of numerous lawsuits, especially when an "overallowance" on the value of the trade-in occurs. The California Automobile Sales Finance Act (ASFA) and California Vehicle Leasing Act (CVLA) require dealers to disclose negative equity on a conditional sale contract or lease.[1] (See Chapter 28, Disclosing Negative Equity, for a specific discussion of this topic).

Another compliance sticking point with trade-ins concerns the amount a customer owes ("payoff amount") to the legal owner or lessor of the trade-in vehicle. California law requires that a dealer make the payoff on a trade-in vehicle to the legal owner or lessor within 21 calendar days after the trade-in is acquired.[2] Dealership personnel should strive to obtain accurate payoff information and properly document all aspects of the transfer of the trade-in vehicle. (See Chapter 37, Trade-In History Report and Other Trade-In Documentation, for discussion of this documentation).

Leased vehicles which are being returned (not traded in) in connection with the sale or lease of a new vehicle should be handled by dealership personnel according to the applicable lease return procedures of the lessor involved.

Trade-in history

Obviously, any information that dealership personnel can obtain from a customer regarding a proposed trade-in vehicle is important in deciding whether the dealer will accept the vehicle in trade and the amount of money to offer for the trade. Key in this regard is whether the trade-in has sustained prior damage or has any other adverse history. Such information is also important in putting the dealer in the best position to defend against claims made by future buyers of the vehicle relating to undisclosed damage or prior usage. (See Chapter 37 for discussion regarding documenting information received from a customer relating to a trade-in vehicle.)

[1] Civil Code §§ 2982(a)(6)(B) and 2985.8(c)(2)(F)
[2] Vehicle Code § 11709.4

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Vehicle recall status

Dealership personnel should obtain information regarding the recall status of every proposed trade-in vehicle at the time that the vehicle is being valued and should not rely on representations made by customers. The National Highway Traffic Safety Administration's recall database, available at www.nhtsa.gov/recalls, provides such information.

Negative equity rules and valuing the trade-in

Neither Regulation Z nor ASFA speak directly to the threshold question of what method a dealer must use to value a trade-in vehicle for purposes of determining whether any negative equity exists. At least one California court, however, has addressed the valuation issue. According to the 2005 case of *Thompson v. 10,000 RV Sales,* a dealer is prohibited from overallowing on the trade-in vehicle and "rolling" the overallowance into the purchase price to disguise negative equity.[3] Even though ASFA refers to the trade-in value to be used in calculating negative equity as the "agreed value," the court ruled in that case that a dealer could not insert a number other than the actual value to the dealer for purposes of securing financing or evading the negative equity disclosure statement. This decision generally implies that the value that must be used and disclosed by a dealer as the "agreed value" is the value of the trade-in to the dealer.

Negative equity rules for leases similar

The *10,000 RV* case refers only to conditional sale contracts governed by ASFA. The case is not directly applicable to leases because leases are governed by a completely different set of laws than those applicable to conditional sale contracts. However, negative equity issues certainly arise in lease transactions as well. In the 1999 California case of *Kroupa v. Sunrise Ford,* a dealer was found to have violated the leasing single document rule because the addition of negative equity to the capitalized cost was disclosed in documents separate from the lease contract itself.[4] In addition, the CVLA requirement that the value of the trade-in be disclosed in the lease contract uses the term "agreed-upon value." The law also requires that negative equity (described as a prior credit or lease balance) be itemized as a separate item in the itemization of gross capitalized cost section of the lease agreement. As a result, the trade-in valuation rules followed in credit sales where negative equity might be involved should also be followed in lease transactions.

Do not overallow to avoid disclosure of negative equity

Even though ASFA requires disclosure only of the "agreed value" of the trade-in, the lesson for dealers from the *10,000 RV* decision is not to overallow on a trade-in to avoid the disclosure of negative equity.

In appraising trade-ins, internal dealer records may refer to a vehicle's actual cash value (ACV). Using this value as the "agreed value" on a conditional sale contract or lease is a practice that presents a strong defense to any allegations that an overallowance was made.

[3] 130 Cal. App. 4th 950
[4] 77 Cal. App. 4th 835

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Retained equity

In addition to allowing for two trade-in vehicles, the 2023 edition of the LAW RISC also allows dealers to properly document when consumers choose to retain equity from a traded-in vehicle. Dealers should proceed with caution, though, and ensure that no overallowances are used to create retained equity and that the retained equity section is never used when it would create negative equity.

Lien payoff requirement

California law dictates when a dealer must make the payoff on a trade-in vehicle and prohibits the vehicle from being sold or consigned until the payoff is tendered. Specifically, a dealer is required to pay to the legal owner or lessor the balance due on a trade-in as specified in the sale or lease contract no later than 21 calendar days after the trade-in is acquired (this time frame can be shortened if the parties agree in writing).[5] If the sale or lease contract does not include an agreement regarding the trade-in payoff, the dealer is obligated to pay the entire amount owing on the trade-in. This statutory obligation to pay off a trade is not violated if the dealer in good faith gives notice of rescission of the contract within the 21-day period after the vehicle is acquired and the contract is rescinded on grounds recognized by California law (e.g., mutual consent, mistake, fraud, duress, etc.).[6] Generally, this will be satisfied by properly exercising the "seller's right to cancel" as described in Chapter 45, Inability to Assign Contract or Lease.

Handling lease returns

Dealership personnel should be clear in their communications with customers regarding the handling of vehicles leased by customers and being turned in to the dealer. The initial point of clarity is whether the vehicle is being treated as a trade-in and paid off or treated as a lease return with the vehicle to be surrendered to the leasing company by the dealer on behalf of the customer. Any special agreements (for example, the dealer paying the last two payments on the lease) reached between a dealer and a customer regarding the handling of a leased vehicle being turned in should be properly documented. If such an agreement is made in connection with a lease transaction, this means inserting the agreement terms in the box for individualized agreements located on the face of the lease agreement. (See Chapter 25, Vehicle Lease Agreements, for a discussion of this process).

If a dealer is authorized to accept lease returns, dealership personnel should carefully follow the lease policies of the leasing company involved. Dealership personnel should be sure to have the customer sign all necessary documentation, including an odometer certificate, as may be required to transfer title. (See Chapter 37 for a discussion of trade-in/lease turn-in documentation).

Lease Buyouts

When handling lease buyouts, including when the customer uses credit to finance a lease buyout, dealers should carefully review the terms of the lease agreement to ensure they do not include any additional charges that are not contained in the lease agreement, such as, for example, a document processing charge. In addition, dealers

[5] Vehicle Code § 11709.4
[6] Civil Code § 1689

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should avoid charging the customer a higher purchase price when the customer uses credit to finance the lease buyout because it may be construed as a hidden finance charge.

Early lease termination

California law provides the lessee of a vehicle primarily used for personal, family, or household purposes with a statutory right to terminate the lease early.[7] The liability of the lessee in this situation is determined by the terms of the lease contract, subject to certain statutory protections in favor of the lessee. When a lessee is buying the vehicle or trading it in toward the purchase or lease of another vehicle, there is a statutory formula used to determine an amount which the selling price of the leased vehicle cannot exceed.[8]

DEALER TIP: EARLY LEASE TERMINATION
Dealership personnel should be careful not to misrepresent the liability of a lessee in connection with the early termination of a lease.

[7] Civil Code § 2987
[8] Civil Code § 2987(f)

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CHAPTER 12: ANTI-PACKING RULES

This chapter reviews rules against "packing" as well as general prohibitions against using deception to add charges to a sale or lease contract.

Legal background

Payment packing often takes the form of inducing the customer to believe that a quoted installment payment is a "base payment" for purchase of just the vehicle, whereas the payment has actually been inflated above the base payment to allow room or "leg" to add charges for F&I products. Deceptive conduct such as this has long been and remains illegal under a variety of legal doctrines and consumer protection statutes. In addition, a statute in the California Vehicle Code specifically addresses "packing."[1]

This statute's anti-packing provisions can easily be confused with another requirement found in California law - the requirement that a buyer entering into a conditional sale contract receive a pre-contract itemization of six "listed" F&I products – service contracts, GAP waivers, insurance, theft deterrent devices, surface protection products, and contract cancellation option agreements.[2] (See Chapter 22, Pre-Contract Disclosure Statement, for a discussion of that disclosure requirement).

Rules apply to sales and leases

The anti-packing prohibitions found in the Vehicle Code apply to both consumer and commercial sale and lease transactions.

Rules against packing added charges

What are added charges?

The anti-packing rules apply to "any type of good or service" added to the price of the vehicle as negotiated. This includes not only typical F&I products, but may reach items usually disclosed only on the final contract document, such as a dealer document processing charge.

However, this does not mean that every charge above the vehicle base price is an added charge subject to the anti-packing rules. There are two major exceptions: included accessories and governmental fees.

Radios, wheel rims, truck bed liners, and other items that are or will be physically attached to the vehicle and which were included as part of the final cash selling price arrived at during negotiations are not required to be separately disclosed. This is confirmed in a letter of legislative intent drafted by the author of the anti-packing law.

Taxes and governmental fees can be considered excluded as well because they are not a good or service being provided by a dealer to a consumer.

[1] Vehicle Code § 11713.19
[2] Civil Code § 2982.2

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Added charges may not be disguised

The anti-packing prohibitions of the Vehicle Code can be divided into two parts, referred to in this chapter as the "general rule" and the "consent rule."

Under the general rule, dealership personnel are prohibited from doing any of the following for the purpose of disguising the actual charges for goods or services to be added to the contract:

- Inflating payments,
- Inflating a downpayment, and/or
- Extending the maturity date of a lease or contract.

If nothing is being "disguised," this rule will not be violated. Proving a lack of intent to disguise, however, can be difficult. To help overcome this problem, a dealer can adopt a policy that dealership personnel must always disclose the estimated base installment payment, downpayment, term, and the APR (for contracts) before discussing or quoting prices or payments for any added items. In addition, dealers should consider adopting a policy that would require a special approval and management sign-off for any change in APR or term after some point in the sales and F&I process (for example, after an initial payment quote has been given to the customer).

Added charges require prior consent

The consent rule attacks packing by prohibiting dealership personnel from negotiating the terms of a vehicle sale or lease contract and then adding charges to the contract for any goods or services "without previously disclosing to the consumer the goods and services to be added and obtaining the consumer's consent."[3]

While open to multiple interpretations, a conservative compliance policy for this consent rule would be to provide a pre-contract disclosure of all goods and services to be added to the negotiated cash price of the vehicle. While not required by this rule, obtaining written evidence of the customer's consent to the added goods and services should be strongly considered as a compliance strategy.

One way of obtaining proof of disclosure and consent for items added to the negotiated cash price is to use a pre-contract disclosure form. As discussed in Chapter 22, California law requires dealers to provide customers a pre-contract written itemization of six "listed" F&I products – service contracts, GAP, insurance, theft deterrent devices, surface protection products, and contract cancellation option agreements.[4]

The Reynolds and Reynolds Pre-Contract Disclosure Form (Form LAWCA-PCD) discussed in Chapter 22 not only handles the six-item statutory disclosure, but can also be used to disclose additional goods and services and obtain customer consent for these items.

[3] Vehicle Code § 11713.19
[4] Civil Code § 2982.2

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Other packing practices illegal

Any other practice that uses deception to add goods or services to the customer's contract remains illegal, even if not technically in violation of the specific anti-packing rules of the Vehicle Code. For example, quoting a packed payment from the inception and never disclosing that it includes added charges is considered to be deceptive. Referring to the packed payment as "your protected payment" not only fails to cure the problem, but also could be taken as evidence of an intent to mislead and conceal. "Hide the ball" tactics violate the laws regarding deceptive practices discussed in Chapter 13.

Consider a Voluntary Protection Products Policy (VPP Policy)

In June 2022, the Federal Trade Commission (FTC) proposed a new motor vehicle trade regulation rule that would regulate the sale of optional F&I products, also known as voluntary protection products (VPP).[5] The proposed rule, if adopted, includes the following:

- Vehicle's offering price (sales price) used for advertisements and communications with consumers must be the full cash price for which a dealer will sell or finance a vehicle to any customer, excluding only required government charges (tax, license, mandatory inspections, etc.;
- Dealers are prohibited from selling add-on products that provide no benefit to customers. The proposed rule specifically cites "nitrogen filled" tires as one such product;
- Dealers are prohibited from making specific enumerated misrepresentations about the benefits of VPP.

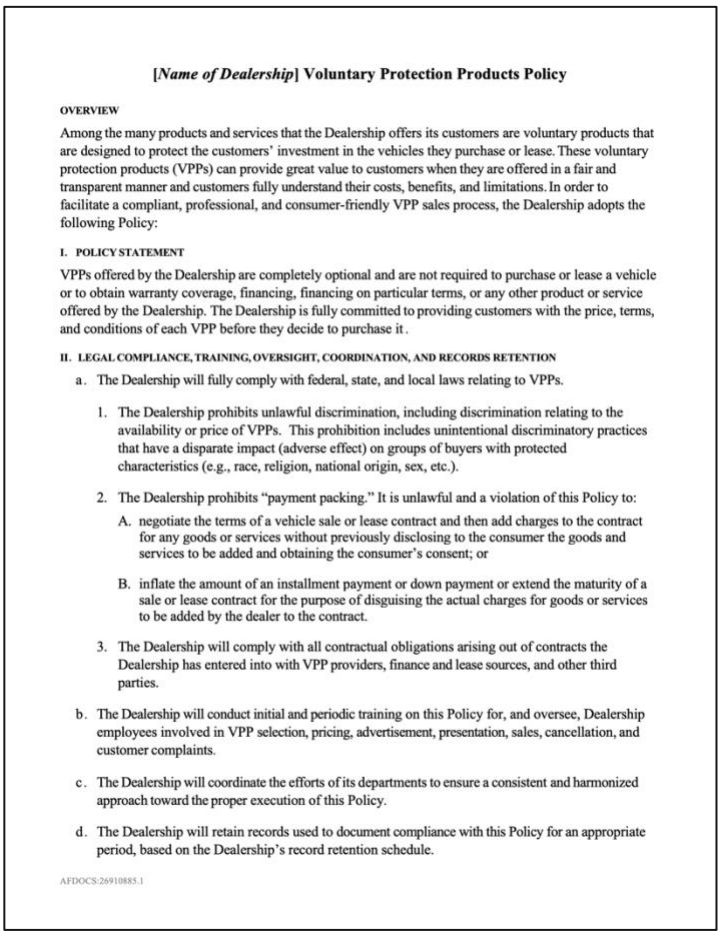
At the time of publication, the FTC had not yet adopted this proposed rule, but it appears likely to do so. With the proposed rule, the FTC seeks to address discriminatory/inconsistent pricing of VPP, the sale of valueless

[5] https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-proposes-rule-ban-junk-fees-bait-switch-tactics-plaguing-car-buyers

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VPPs, and what it considers unfair and deceptive business practices in this area. In April 2022, the FTC reached a $10 million settlement with an Illinois dealer group for allegedly telling customers that they had to purchase service contracts to finance a vehicle, and charging non-white customers an average of $99 more for VPP.

Dealers should consider adopting and implementing a written VPP Policy that regulates how and when VPPs are presented to consumers. Such a policy would include requiring dealer personnel to only present VPPs that offer value to the customer (i.e. service contracts that offer value beyond what is already covered under warranty), establishing standard pricing for VPPs, and prohibiting payment packing. Dealers that adopt a VPP Policy must require proper training and through implementation to ensure the policy is effective. Dealers considering implementing a VPP Policy should consult with competent counsel.



[*Name of Dealership*] Voluntary Protection Products Policy

OVERVIEW

Among the many products and services that the Dealership offers its customers are voluntary products that are designed to protect the customers' investment in the vehicles they purchase or lease. These voluntary protection products (VPPs) can provide great value to customers when they are offered in a fair and transparent manner and customers fully understand their costs, benefits, and limitations. In order to facilitate a compliant, professional, and consumer-friendly VPP sales process, the Dealership adopts the following Policy:

I. POLICY STATEMENT

VPPs offered by the Dealership are completely optional and are not required to purchase or lease a vehicle or to obtain warranty coverage, financing, financing on particular terms, or any other product or service offered by the Dealership. The Dealership is fully committed to providing customers with the price, terms, and conditions of each VPP before they decide to purchase it.

II. LEGAL COMPLIANCE, TRAINING, OVERSIGHT, COORDINATION, AND RECORDS RETENTION

a. The Dealership will fully comply with federal, state, and local laws relating to VPPs.

1. The Dealership prohibits unlawful discrimination, including discrimination relating to the availability or price of VPPs. This prohibition includes unintentional discriminatory practices that have a disparate impact (adverse effect) on groups of buyers with protected characteristics (e.g., race, religion, national origin, sex, etc.).

2. The Dealership prohibits "payment packing." It is unlawful and a violation of this Policy to:

A. negotiate the terms of a vehicle sale or lease contract and then add charges to the contract for any goods or services without previously disclosing to the consumer the goods and services to be added and obtaining the consumer's consent; or

B. inflate the amount of an installment payment or down payment or extend the maturity of a sale or lease contract for the purpose of disguising the actual charges for goods or services to be added by the dealer to the contract.

3. The Dealership will comply with all contractual obligations arising out of contracts the Dealership has entered into with VPP providers, finance and lease sources, and other third parties.

b. The Dealership will conduct initial and periodic training on this Policy for, and oversee, Dealership employees involved in VPP selection, pricing, advertisement, presentation, sales, cancellation, and customer complaints.

c. The Dealership will coordinate the efforts of its departments to ensure a consistent and harmonized approach toward the proper execution of this Policy.

d. The Dealership will retain records used to document compliance with this Policy for an appropriate period, based on the Dealership's record retention schedule.

AFDOCS:26910885.1

CNCDA developed a Voluntary Protection Products Policy, designed for use at California dealerships to implement a California-compliant policy on the sales of voluntary protection products. Dealers can access CNCDA's VPP Policy on CNCDA Comply at: https://www.cncda.org/publications/voluntary-protection-products-policy-template-for-california-dealerships/.

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CHAPTER 13: DECEPTIVE PRACTICES

This chapter reviews rules against misleading statements in the F&I department and explains that what you say can hurt you.

Legal background

The Supreme Court of California has construed many of the California statutes prohibiting false and misleading advertising to encompass all forms of public notice, including not only traditional advertising media, but also one-on-one, face-to-face communications.[1] In addition, the California Consumer Legal Remedies Act (CLRA) provides a list of more than 20 prohibited acts and practices, including representing that goods or services have benefits or quantities which they do not have or that a transaction involves rights, remedies, or obligations which it does not have or which are prohibited by law.[2]

In recent years, the ability of private attorneys and governmental agencies to enforce these laws has expanded. Although the passage of Proposition 64 in 2004 reined in the more egregious aspects of certain unfair business practices lawsuits, this type of legal action as well as class action lawsuits, lawsuits under the CLRA, and governmental actions may be pursued against dealers when deceptive conduct is alleged.

Pre-contract oral statements are actionable

Dealers need to be aware that they are not protected from legal action based on the "parol evidence rule" defense. This eroded legal theory viewed the final, signed agreement as trumping any oral statements made prior to execution of the contract. In other words, even if the final contract is in perfect form, a dealer is subject to legal claims based purely on oral, pre-contract communications made by dealership personnel to the buyer. What you say can hurt you!

Practices and labels you must avoid

It is impossible to list all acts and practices that potentially violate laws against deceptive statements and practices. The following are a sampling of practices that have been attacked as deceptive or unfair.

Payment packing

See the discussion of payment packing in Chapter 12, Anti-Packing Rules.

"Steering" and other misleading statements about APR

Steering refers to misleading the customer about his or her credit, including charging a higher APR than such a customer would normally be charged and falsely insisting his or her creditworthiness dictates such a high rate. Steering and other inaccurate statements about the APR to be offered in a conditional sale contract can be used

[1] Business and Professions Code §§ 17200 and 17500; Vehicle Code § 11713(a); Ford Dealers v. Department of Motor Vehicles (1982) 32 Cal. 3d 347
[2] Civil Code § 1750 et seq.

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as a basis for a claim of false and deceptive conduct. See the discussion in Chapter 16 on setting the APR and finance income limitations.

"Lowest possible rate"

Declaring to the customer that the rate being offered by the dealership is the lowest possible rate he or she can qualify for can be a type of "steering" if the dealership employee making the statement knows it to be false. Sometimes this problem is not raised by intentional deception, but an innocent – yet serious – misstatement. Dealership personnel should never advise a customer that he or she is being offered the best possible rate (unless the rate is zero!) because customers (and their attorneys) can take that statement to mean that dealership personnel have evaluated the customer's credit and know for a certainty that no other lender or dealer could possibly offer a lower rate (a statement construed in such a manner, of course, is simply not true). Dealership personnel should strive instead to present the rate as the dealership's best effort to compete with the customer's other financing options.

"Bushing"

"Bushing" traditionally referred to a variety of practices all based on misleading the customer about supposedly final numbers, such as the amount of rebates, taxes, or trade-in value, but then subsequently changing those numbers. At times, the term "bushing" has been equated with "yo-yo financing," discussed below.

"Yo-yo financing"

"Yo-yo financing" generally refers to a dealer deliberately delivering to a customer a vehicle pursuant to a contract with great terms, but for which the customer could never qualify, all with the plan and intent to call the customer back to re-write the contract on much less favorable terms. This practice is deceptive and misleading and must be avoided and prevented.

It is sometimes necessary to ask a buyer to return a vehicle if the conditional sale contract cannot be assigned. This must always be done pursuant to a clause in the contract allowing rescission.

Relying on such a clause would be awkward if the customer had been told unequivocally at the time of purchase that his or her financing had been approved. Attorneys and regulators often use ambiguous statements by dealership personnel to allege yo-yo financing, such as "your financing is ready to go" or "this will be no problem." Dealership personnel should avoid leaving the impression that financing has been secured and explain fully and honestly the provisions of the dealership's right to rescind when going over the contract with the buyer.

Can the yo-yo financing label be applied every time a dealer relies on a clause in the contract allowing rescission if financing cannot be obtained? No, but it is essential that the terms of the clause be carefully observed and honored and that the effort to secure the original financing be pursued honestly and in good faith. For more information on the ability of dealers to cancel contracts when unable to assign the contract to a finance company, see Chapter 45, Inability to Assign Contract or Lease.

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"Swallowing" the down, trade, or rebate

"Swallowing" basically refers to stealing the downpayment, trade-in equity, or factory rebate. This stealing is often accomplished by allowing the customer to believe the downpayment, trade-in, or rebate will be included in the contract or lease to reduce the amount financed or initial lease balance. Unscrupulous dealership personnel sometimes "neglect" to include these amounts in the contract or lease – but collect them anyway. Clearly, this is deceptive conduct at its worst and must be prevented.

"Lease to own"

Dealership personnel must scrupulously avoid any conduct that would lead or allow a customer to believe he or she will be purchasing a vehicle when in fact a lease is planned. The sale to lease switch is a textbook example of an unfair and deceptive dealership tactic. It is often assumed by regulators that these tactics are used against non-English speaking customers. Beyond remaining honest and refraining from such tactics, dealership personnel should avoid using credit and purchasing jargon if a lease is being discussed, including terms such as "principal," "rate," "equity," and "prepayment penalty."

Regulators and attorneys have long accused dealers of using false or misleading statements to push vehicle leasing. Most of these are outright falsehoods that professional dealership personnel know should never be used. Examples include statements about leasing such as:

- "You can get out early"
- "You can swap cars anytime you want"
- "The lease won't show up as a liability on your credit"
- "Rebates don't apply to leases"
- "The leasing company requires a service contract"
- "The money factor is the same as an APR for leases"

Dealer will "assume" lease payments on trade-in

Statements such as "we will take over responsibility for the lease payments due on your trade-in if you buy today" are viewed by some regulators and attorneys as misleading if it is the dealer's intent to merely pay the final few lease payments and then turn in the trade-in to the leasing company at the end of the term. Statements such as this can lead a customer to believe that all liability under the lease on the trade-in is being assumed by the dealer. Disputes of this type can be avoided by making sure everything said to the customer about handing payments and the payoff on a trade-in is precise, accurate, in writing, and in compliance with the single document rule. (See Chapter 26, Single Document Rule).

Dealer-added accessories

Dealer-added accessories are sometimes the focus of claims alleging dealership personnel employed deceptive practices. For example, if an alarm was not installed on a vehicle, it would be a deceptive practice for dealership personnel to communicate to the customer that because it is already installed on the vehicle, the alarm must be purchased.

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If your dealership advertises a vehicle that already has dealer-installed accessories, the advertised price must include those accessories. Conversely, if the accessories are not installed at the time of the advertisement, the advertised price may not include the cost of those items.

For vehicles not subject to price advertising, no law requires preinstalled dealer-added accessories to be removed at the request of a customer. However, it may be a deceptive practice to negotiate a supposedly "final" price for the base vehicle but to then advise the buyer at the last minute that additional sums are due for dealer-added accessories and equipment. If a dealership employee finds that negotiations have inadvertently headed in this direction, the potential for a deceptive practices claim could be avoided by giving the customer the option of having the pre-installed items removed before purchase. To avoid any possible claims of this kind, some dealers use a form that discloses all dealer-added accessories and contains the customer's signed acknowledgement that the customer was given the option of not purchasing the added accessories.

Evading oral commitments

Dealership personnel who promise the customer something during the course of the negotiations but fail to deliver and then keep quiet about it are often accused of bait-and-switch and other deceptive practices. Dealers should keep track of oral commitments made during negotiations and honor these commitments in the final deal.

Mischaracterizing a service contract as a warranty

Courts have ruled that a dealer's representations were deceptive where the sales personnel mischaracterized the service contract as a "warranty," and the provisions contained in the service contract referred to it as a "warranty."[3]

[3] Jones v. Auto Credit Center, Inc. (2015) 237 Cal.App.4th Supp. 1

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CHAPTER 14: NEW OR USED

This chapter discusses how vehicles are classified for purposes of disclosure on a conditional sale contract and other F&I documents.

Legal background

Several California laws prohibit advertising a used vehicle as "new."[1] Vehicles must also be accurately designated as "new" or "used" on any conditional sale agreement.[2] For motor vehicles, the definitions of "new" and "used" are fairly technical.

Definition of new vehicle

Under California law, a "new vehicle" is defined as a vehicle constructed entirely from new parts that has never been the subject of a retail sale, registered with the DMV, or registered with the appropriate agency or authority of any other state or country.[3]

Definition of used vehicle

Under California law, a "used vehicle" is generally defined as any vehicle that does not meet the definition of a new vehicle.[4] In other words, a vehicle becomes "used" once it is sold (except by the factory to the dealer or in a same-line-make dealer trade), registered with DMV (or any state or country), or otherwise "deemed" to be used, as described below.

Vehicles "deemed" to be used

The Vehicle Code's definition of a "used vehicle" deems some vehicles "used" even if they have never been sold or registered. These vehicles are primarily those used as unregistered dealer demonstrator vehicles or manufacturer sales or distribution vehicles (i.e., "brass hats").

What is a demonstrator? A DMV regulation provides that a demonstrator is a vehicle specifically assigned by a dealer to be regularly used for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type.[5] A vehicle in a dealer's inventory which is only occasionally demonstrated to a prospective purchaser whose interest has focused on that particular vehicle is not a "demonstrator."

In addition, a Vehicle Code statute provides that a vehicle may not be described as "new" if it was used by a dealer, manufacturer, or distributor as a demonstrator, executive vehicle, service vehicle, rental, loaner, or lease vehicle, whether or not it was registered.[6]

[1] Civil Code § 1770(a)(6); Vehicle Code § 11713(d)
[2] Civil Code § 2982(q)
[3] Vehicle Code § 430
[4] Vehicle Code § 665
[5] 13 CCR § 255.02
[6] Vehicle Code § 11713(t)

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Classifying a vehicle as new or used

A key concept in the new/used classification system is that any vehicle that is not "new" is "used." While vehicles can be properly described as a "demonstrator," "off-lease vehicle," or "certified pre-owned," these terms are not substitutes for the official classification of such vehicles as "used." Generally, any vehicle that is taken out of a dealer's new vehicle inventory for any extended or regular use will lose its status as "new" and become "used."

The classification of a vehicle must be made in order to make the "new or used" disclosure in the contract for the sale of a vehicle as required by California law, including correctly entering either "new" or "used" when completing the "red box" disclosure in a conditional sale contract.[7] It is also necessary for purposes of advertising the vehicle for sale or lease.

Most vehicles become "used" by sale or registration

Once a vehicle is sold to a retail purchaser, it immediately becomes "used." A vehicle is sold when the dealer receives payment (or a signed contract) and the vehicle is delivered to the buyer. Once a vehicle is "rolled" in this manner, any subsequent rescission of the sale (or "rollback") cannot restore its status as "new." The same holds true for registration of the vehicle with the DMV – once registered, even if not sold by the dealer, the vehicle is permanently considered a "used vehicle."

Some vehicles are automatically classified "used" before sale or registration

Vehicles used by a dealer, manufacturer, or distributor for any of the following purposes, whether registered or not, are automatically classified as "used" under applicable law:[8]

- Demonstrators,
- Executive vehicles,
- Rentals,
- Loaners,
- Lease vehicles, and
- Service vehicles.

Some of these vehicle types (notably demonstrators and sometimes loaner vehicles) are not registered with DMV, and the eventual sale must be reported on a new vehicle report of sale with an appropriate statement of facts. However, all other documents and advertisements should describe such vehicles as "used."

Use "new" and "used" correctly

The terms "new" and "used" must be correctly stated in every communication with a customer and/or document furnished to them. This includes all documentation providing for a "new" or "used" designation. Examples include vehicle advertising, worksheets, internal forms, and the new/used box at the start of the vehicle description in the conditional sale contract.

[7] Civil Code § 2982(q); Vehicle Code § 11713.1(v)
[8] Vehicle Code § 11713(t)

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New vehicle report of sale for a used vehicle?

As discussed above, a variety of vehicles must be classified as "used," even though they have never been registered with DMV. Demonstrators are an example. Because these vehicles have no license plates or other record on file with DMV, they must be registered under a new vehicle report of sale, which creates the initial "birth report" for that vehicle. However, all other documentation pertaining to these vehicles must avoid the term "new." The DMV also requires a REG 496 form signed by the seller and the buyer in connection with the sale of a dealer demonstrator vehicle (or factory executive vehicle).

New/used placement in conditional sale contract

The law requires completion of the box outlined in red on the conditional sale contract form with either the word "new" or "used."[9] To avoid a common problem, dealers should take care to ensure that F&I printers and DMS software print "used" in this box when the vehicle is a demonstrator or other unregistered vehicle. In the past, some systems have classified these vehicles as "new" (because they were not sold and were never moved out of the "new vehicle inventory" maintained by the DMS) and, as a result, a "new" description was incorrectly printed on contracts.

Returns, rewritten contracts, and rollbacks

The DMV recognizes that if a dealer sells a "new vehicle" and the buyer's financing is rejected, and so a second "rewritten" contract is voluntarily entered into by the dealer and the exact same buyer, the dealer can designate that vehicle as "new" on the second contract. However, if the second contract involves a different buyer or an added co-signer, the DMV considers the vehicle to be a "rollback," which requires that the vehicle be designated on the second contract as "used."[10] Otherwise, the DMV considers any "new vehicle" purchased from a dealer, included on a copy of the report of sale and then returned to the dealer, to be a "rollback" vehicle which must be disclosed as a "used vehicle" to the next buyer.

If a deal is unwound before a customer takes delivery of a "new vehicle" and a dealer voids the report of a sale, the DMV still considers the vehicle to be "new."[11]

Non-franchised dealers

Vehicles acquired by a dealer not franchised to sell the line-make of the vehicle acquired must be advertised and sold as "used."[12] Acquiring vehicles in this way is uncommon, because franchised dealers cannot sell to non-franchised dealers on a hold for resale – sales tax would be immediately due at the time of sale.

Dealers franchised for the same line-makes may make dealer trades, or purchases and sales, between themselves of the same line-make vehicles without causing the vehicle to be considered "used."

[9] Civil Code § 2982(q)
[10] Vehicle Industry Registration Procedures Manual § 6.025; Vehicle Code § 5901(d)
[11] Vehicle Industry Registration Procedures Manual § 6.025; Vehicle Code § 5901(d)
[12] Vehicle Industry Registration Procedures Manual § 6.035; Vehicle Code § 11713.1(f)

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Other consequences of new/used distinction

Some consequences of the new/used distinction are not always obvious, including the examples below.

MSRP sticker

While demonstrators must be sold as "used vehicles," they are not considered exempt from federal laws that require the federal Monroney label to remain affixed to the vehicle until after it is delivered to the first retail customer.[13]

Used Car Buyers Guide

Demonstrators are considered "used vehicles" for purposes of the federal requirement that a Used Car Buyers Guide be displayed on the vehicle and provided to the customer when the vehicle is sold. In fact, federal law only exempts "new vehicles" if they show mileage equal to or less than that required to move and road test the vehicle. Therefore, a demonstrator vehicle displayed for sale must have a Monroney label *and* a Used Car Buyers Guide affixed to the vehicle. (See Chapter 21 for a discussion of the Used Car Buyers Guide requirements).

Used vehicle contract cancellation option agreement

The Car Buyer's Bill of Rights requires dealers to offer a used vehicle contract cancellation option agreement to purchasers of "used vehicles" sold for less than $40,000, even if the vehicle is a demonstrator.[14] (See Chapter 29, Used Vehicle Contract Cancellation Option Agreement).

[13] 15 U.S.C. § 1233
[14] Vehicle Code § 11713.21

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CHAPTER 15: WORKSHEETS AND MENUS

This chapter discusses the compliance issues raised by worksheets, menus, and other related documents.

Legal background

Many laws impact the use and content of worksheets and menus. California law requires that a dealer deliver to the buyer any "vehicle purchase proposal" which the buyer has signed during the contract negotiations.[1]

"Purchase orders" – documents purporting to bind consumers to purchase a vehicle prior to execution of a conditional sale contract are also heavily regulated by California law. The law effectively requires that purchase orders comply with virtually all disclosure requirements that apply to conditional sale contracts.[2]

California laws prohibiting deceptive statements and practices are also relevant to worksheets and menus.[3]

Customer copy requirement

If a customer signs a worksheet, he or she must receive a copy of it at the time a vehicle is purchased. The same applies to four squares, menus, and other documents containing specifics about a proposed purchase transaction signed by the customer.

Risks of "obligating" the customer to the worksheet

Other than the pre-contract disclosure statement (see Chapter 22, Pre-Contract Disclosure Statement), there is no requirement under California law to obtain customer signatures on pre-contract worksheets.[4]

Misleading customer into believing binding obligation exists

Some salespeople and F&I managers try to obtain a customer's signature on a worksheet to secure the customer's "commitment" to buy on the terms described. However, a customer is not bound to purchase a vehicle until a formal conditional sale contract is signed, and any conduct by dealership personnel leading the customer to think otherwise is a deceptive practice.

Unintended purchase order

Depending on their context and how they are used, there is a risk that worksheets and even menus could be attacked as illegal purchase orders because they fall within the open-ended definition of that term and lack the required disclosures.

[1] Civil Code § 2981.9
[2] Civil Code § 2981(l)
[3] Business and Professions Code §§ 17200 and 17500; Civil Code § 1770; Vehicle Code § 11713(a)
[4] Civil Code § 2982.2

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Avoiding the risks

Dealership personnel should not use worksheets, menus, or other documents which, if signed by the customer, leave the impression the customer is bound to enter into an agreement to purchase or lease a vehicle. One approach to handling this issue is for dealers to discontinue requesting customer signatures on worksheets, menus, and similar documents. An added benefit of this approach is that an unsigned copy of the worksheet, menu, or other document does not need to be provided to the customer.[5]

Another approach is to include disclaimers on all worksheets, menus, and similar documents that expressly state that the customer is not bound or committed to purchase or lease a vehicle. Even with a disclaimer such as this, if the customer signs the document, he or she must receive a copy of that document at the time a copy of the signed purchase or lease contract is provided.

Should unsigned worksheets be thrown away?

Customer signed worksheets should not be thrown out. Dealers must give a copy of any customer-signed worksheet to the customer and should keep a copy for the dealership's records as well.

Assuming they are not used in any way to evaluate credit (in which case they would need to be retained for 7 years)[6], no law specifically addresses the handling of unsigned worksheets. Record retention laws, however, may apply. DMV regulations appear to require a dealer to keep all records maintained "in the regular course of business" for 3 years.[7] Whether these regulations cover worksheets depends on if they are an official part of the dealer's established business practice, or just used as a form of scratch paper. Regardless as to how a dealer decides this question, worksheets or other papers related to a claim or lawsuit should never be thrown out while a claim or lawsuit is pending.

Risky statements on worksheets and menus

Product descriptions

Worksheets and menus often contain preprinted statements describing F&I products or other aspects of the transaction. These statements must not be false or misleading in any way. Because the complex terms and conditions of F&I products can never be adequately explained in the short description of such products included in a menu or worksheet, dealers should consider using a disclaimer similar to the following:

"This menu is a quick reference only and is not a full summary of the terms, party responsibility, cost, or cancellation or claim procedures of any product or service. See individual product documentation for details."

"Agreements" – Single document rule violations

Any agreement or commitment made on the part of the customer or dealer in the menu or worksheet has the potential of violating the single document rule. (See Chapter 26, Single Document Rule.) For this reason, a dealer should not obtain or make a binding commitment or agreement in a worksheet or menu. Generally, only

[5] Civil Code § 2981.9
[6] Civil Code § 2984.5
[7] 13 CCR § 272.00

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acknowledgements of disclosures and other information should be included above customer signature lines in menus.

Customer "Waivers and Indemnities" – deceptive practice claims

When a customer wishes to decline certain F&I products, some menu vendors suggest that the customer be required to sign a "waiver" or "indemnity" statement that has the customer "waive" the benefits provided by the product. While this practice is not illegal per se, to avoid unfair practices claims, dealers should not include legalistic, complex or intimidating statements in menus that customers are expected to sign if not purchasing F&I products.

Maximizing F&I compliance with menus

While no law requires dealers to use a menu as part of a sale or lease transaction, menus that clearly disclose the base (vehicle only) installment payment, downpayment, contract term, APR, and that all payments respecting added items were based on these same contract terms, can help a dealer to defeat a packing claim. Still, the use of a menu cannot entirely avoid allegations that dealership personnel packed payments. For example, a customer may claim that dealership personnel packed the payment before the menu was presented and rushed or tricked the customer into signing the menu and the contract.

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CHAPTER 16: FINANCE INCOME LIMITATIONS

This chapter discusses the limitations imposed on reserve or finance participation income by the Car Buyer's Bill of Rights.

Legal background

As part of the Car Buyer's Bill of Rights, the amounts dealers may receive from financing sources accepting assignment of contracts are limited.[1] The law applies to conditional sale contracts governed by the California Automobile Sales Finance Act (ASFA).

Types of rate control legislation

Conditional sale contract rates can be influenced by a number of laws, from rate caps to finance income limitations. Some background information helps in understanding the applicable limitations.

Rate caps

The most direct way lawmakers have to control rates is to impose caps directly on the contract rate. ASFA has set rate caps for many years, although they do not apply to the vast majority of conditional sale contracts written today, because the law exempts all simple interest contracts having balances over $2,500.[2]

Spread caps

Dealers have the ability to assign contracts to finance sources and receive all or a portion of the spread between the contract rate and the "buy rate." A number of names exist for this money, including reserve income, rate income, or "the back end." While most finance sources offer some rate income based on the spread, the programs available to dealers vary by company and type of contract. The dealer may receive all of the "spread" in some cases and only half of it in others. Most finance companies and banks have a cap of some kind on the spread.

In several nationwide class action lawsuits against automotive finance companies, the spread has been cited as a possible reason some minority buyers allegedly pay more for auto credit. To settle these lawsuits, several prominent finance companies have entered into consent decrees that place limits on the spread. It is important to keep in mind that California law does not modify or change these consent decrees, and that the terms of assignment to a lender subject to a consent decree must meet the limits imposed both by California law and the consent decree.

In addition to the impact the spread allegedly has on minority buyers, some consumer groups believe that the spread is a "hidden markup" imposed by dealers. Since they do not understand how modern automotive finance works, they favor laws outlawing or limiting the spread.

[1] Civil Code § 2982.10
[2] Civil Code § 2982(j)

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NADA has published a guide that discusses an optional fair credit compliance policy and program to address these allegations, which includes a voluntary standard spread. (See Chapter 57 for more information on such a policy.)

Limits on rate income received upon assignment

California law approaches rate income limitations differently. Although the statutory caps are expressed as percentages, they are not spread caps. Instead, percentage numbers are used for each contract to calculate a fixed dollar finance income limit. The limit is the maximum share of the finance income the dealer may receive from the finance source when the contract is assigned. With this approach, it is unnecessary for the law to grapple with confusing and inconsistent concepts such as the "buy rate" or "contract spread." In addition, dealers can comply without having to have perfect and up to date knowledge of every applicable buy rate of every potential finance source.

Finance charge participation limitations

The statutory limits apply to amounts paid or credited to dealers that are based on the finance charge received or to be received under the assigned contract.

The limits are as follows:[3]

- 2.5% for a scheduled term of 60 monthly payments or less
- 2% for a scheduled term of more than 60 monthly payments

Do not compare contract and buy rates to approximate limit

The actual limit established by statute is a *dollar amount* limitation calculated for each contract, *not* a spread cap. The statute makes no reference to the buy rate. It is therefore necessary to determine the statutory limit and compare the resulting number to the actual dollar value of the finance income expected to be received upon assignment.

Calculating the maximum share of the finance charge a dealer may receive

To calculate the limit, replace the contract's actual APR with 2 percent for contracts over 60 months or 2.5 percent for 60 months or less. The "finance charge" that would be calculated for such a contract is the maximum that the dealer may be paid by the finance source based upon the contract's actual finance charge.

Example of calculating the maximum

Two contracts are shown on proceeding pages. The first is the actual contract the customer would be asked to sign. The second is a hypothetical contract used to calculate the finance income limit.

[3] Civil Code § 2982.10

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Actual Contract

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your down payment of $ 5,000.00 is $ 25,000.00 (e)
7.5 %	$ 3,211.84 (e)	$ 20,000.00 (e)	$ 23,211.34 (e)	

(e) means an estimate

YOUR PAYMENT SCHEDULE WILL BE:

Number of Payments:	Amount of Payments:	When Payments Are Due:
One Payment of		
One Payment of		
One Payment of		
47	483.58	Monthly beginning 05/07/2018
One final payment	483.58	05/07/2022

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Hypothetical "2.5%" contract to calculate finance income limitation

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your down payment of $ 5,000.00 is
2.5 %	$ 1,037.44 (e)	$ 20,000.00 (e)	$ 21,037.44 (e)	$ 25,000.00 (e)

(e) means an estimate

YOUR PAYMENT SCHEDULE WILL BE:

Number of Payments:	Amount of Payments:	When Payments Are Due:
One Payment of		
One Payment of		
One Payment of		
47	438.28	Monthly beginning 05/07/2018
One final payment	438.26	04/07/2022

The circled number on the second contract is the finance income limitation. Under this limitation, the dealer may receive up to $1,037.44 of the contract's total finance charge of $3,211.84 from the finance source when the contract is assigned. Neither the buy rate nor the formula for sharing the rate spread influence the amount.

Finance income sharing formulas

Dealer arrangements with finance sources do not always result in the dealer receiving all of the finance income attributable to the spread between the buy rate and contract rate. Some finance companies have historically paid only a percentage of this amount. Others offer the dealer the choice of receiving 100% of this amount subject to charge back for early contract payoff or charge off, or a lesser percentage, but subject to no (or minimal) risk of future charge back. For example, a dealer may elect to accept 90% or 70% of the finance income resulting from the spread and, in return, the finance source would agree, for example, that once the second or third installment payment is paid, the dealer is no longer subject to any chargeback.

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In the above example, $1,037.44 was calculated as the statutory limit. That is a defined dollar limit, and remains the same regardless of whether the dealer has an arrangement with the finance source to receive 100%, 90%, or 70% of the finance income. For example, if a dealer has a 70%/30% arrangement with the finance source, the dealer would still be permitted to receive up to $1,037.44. This means, on a 70% arrangement, that the finance charge to be paid by the customer (and reflected on the actual contract) could be as high as $1,467.77, which is calculated by dividing what the dealer receives ($1,037.44) by the dealer's percentage (70%).

Contracts excluded from any finance participation limitation

The caps apply to installment sales for personal or family use. They do not apply in the following circumstances:[4]

- Assignments with full recourse or an unconditional guaranty
- Assignments more than six months after the sale date
- Leases
- Motorcycle or off-highway vehicle sales

Reasonable compliance procedures to avoid a violation

Violations that result from bona fide errors are excused if the dealer maintains reasonable procedures to guard against errors and promptly, upon notice of the error, remits to the assignee any consideration received in excess of that permitted under the statutory limits.

Rate income limitations do not apply to finance company spiffs

The statutory rate income limitations do not apply to incentives or other compensation provided by a bank or finance company to induce the assignment of a conditional sale contract that are unrelated to the finance charge. This is confirmed in a letter of legislative intent drafted by the author of the law that states:

"The limitations established by this section are not intended to apply to incentives or other compensation to induce assignment of contracts provided by an assignee to the seller that are based on criteria independent of and unrelated to the finance charge or annual percentage rate specified in the contact. Such independent criteria would include, for example, the volume or percentage of the seller's contracts assigned to the assignee, the longevity of the seller's relationship with the assignee, the seller's utilization of other services offered by the assignee, such as vehicle inventory finance lines of credit ("flooring"), and the seller's participation in other programs offered by the assignee, such as service contract and debt cancellation programs. Thus for example, this section would not prohibit the seller from accepting an additional $20 flat fee per contract from the assignee once the seller assigns in excess of 100 contracts to the assignee in a given month or agrees to participate in the assignee's flooring or vehicle service contract programs."

[4] Civil Code § 2982.10(b)

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CHAPTER 17: HIDDEN FINANCE CHARGES

This chapter discusses rules against charging higher prices or requiring other fees to be paid or products to be purchased because of credit issues.

Legal background

The federal Truth in Lending Act (TILA) and Regulation Z are designed to make the APR a meaningful and uniform measure of the cost of credit.[1] To ensure that all costs of credit are included in the APR calculation, Regulation Z provides that any amount charged to a credit customer that would not be charged in a comparable cash transaction is a "finance charge" that must be included in the contract's finance charge and APR disclosures.[2] If these amounts are not included in those disclosures, they are considered "hidden finance charges" and are illegal.

California law provides that it is unlawful to require a buyer to pay a higher price for receiving advertised credit terms than would be charged to a cash buyer.[3]

Applying the rule against hidden finance charges

As dealers must be aware, an extra hundred dollars itemized as a "fee for poor credit" cannot be added to the advertised price of a vehicle. However, the conclusion in other situations may not be as obvious. Below are examples of situations that create hidden finance charge problems.

Cash discounts

Dealers should not offer cash discounts to customers who elect not to finance their vehicle purchase. A cash discount implies a credit surcharge, which is a hidden finance charge. While there may be some motivation to humor a customer who believes he or she should receive a cash discount, a dealer should not adopt the customer's terminology. Instead, a dealer should re-characterize the reason for any discount given, perhaps by calling it a courtesy discount.

Bank fees

Some subprime finance companies impose a discount or "bank fee" on the dealer before they will purchase a contract. A bank fee cannot be "separately imposed" on a credit customer. Generally, this prohibits a dealer from increasing the cash price of a vehicle or adding an itemized charge to cover the bank fee.

To avoid hidden finance charge problems relating to the recapture of a bank fee, dealers should adopt the following strategies:

- Don't itemize the fee, regardless of description;

[1] 15 U.S.C. § 1601 et seq.; Reg. Z, 12 CFR § 1026.1 et seq.; 12 CFR § 226.1 et seq.
[2] 12 CFR § 226.4(a)
[3] Vehicle Code § 11713.1(k)

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- Don't increase an advertised price to cover the fee;
- Don't increase a quoted or negotiated price to cover the fee; and
- Don't cite the fee as an excuse for not offering a better price.

Note vehicle lease agreements are different than agreements providing for the sale of a vehicle and are subject to different statutes and regulations. For example, leases do not provide for finance charges and are not subject to Regulation Z. Therefore, a dealer may charge a lessee an "Acquisition fee" or "Bank fee" which the dealer is required to pay to assign the lease to a finance company, without the concern that exists in a vehicle purchase transaction that such a fee could be construed as an illegal hidden finance charge.

Horse trading the APR

Dealers should direct dealership personnel to not use the APR as a bargaining chip in the F&I sales process. Making a low APR contingent on the purchase of goods or services can lead to a hidden finance charge claim.

An easy example of what not to say is: "To get this low APR, you have to purchase a gold service contract."

The situation becomes more difficult if the customer says "I'll buy the gold service contract if you reduce my APR by 1 percent." In that situation, the APR may be lowered, but not in exchange for any promise or commitment to purchase another product. Therefore, a proper response would be: "We want you to be satisfied, so we are willing to lower the APR on this contract, but you still have the option to purchase or decline the service contract."

Document processing charge discrimination

If a document processing charge is applied to credit sales, that charge must also be applied to cash sales. The fact that a sale is by cash or credit cannot be a factor in deciding whether to waive a document processing charge. If the charge is waived, there must be some viable reason for doing so independent of whether the buyer is purchasing by cash or credit.

Inflated price to cover an overallowance on a negative equity trade

Some courts have ruled that inflating the cash price of a vehicle to cover an overallowance on a trade-in with negative equity results in a hidden finance charge.[4] Overallowance issues are discussed in Chapter 11.

[4] Thompson v. 10,000 RV Sales, Inc. (2005) 130 Cal App. 4th 950

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CHAPTER 18: SERVICE CONTRACTS

This chapter discusses compliance issues relative to service contracts.

Legal background

Legal compliance issues regarding service contracts can be broken down into three primary areas: insurance laws, federal Truth in Lending Act (TILA) requirements, and state contract requirements. California insurance laws define what a "vehicle service contract" is and provide that such a contract will not be treated and regulated as an insurance product if certain requirements are met.[1] Other state and federal laws further regulate the substantive content of service contracts and also impose certain requirements relating to how a service contract and the charge for it are disclosed in a conditional sale contract.[2]

Is the agreement a service contract?

State law defines a "vehicle service contract" as a contract for a separately stated charge and a specific duration of time that covers the repair, replacement or maintenance of a motor vehicle, necessitated by the vehicle's failure whether caused by a defect or normal wear and tear.[3] Agreements relating to vehicle tires, wheels, glass, non-paint dent repairs, key and key fob replacements and also express warranties applicable to vehicle lubricants, treatments, fluids or additives that promise to repair, replace or maintain a vehicle (or indemnify regarding such items)[4] may also come within the definition of a "vehicle service contract."[5] The law permits a vehicle service contract to include certain additional benefits described as incidental payments under limited circumstances for towing, substitute transportation, emergency road service, rental car reimbursement, road hazard protection, reimbursement of deductible amounts under a manufacturer's warranty, and reimbursement for travel, lodging, or meals if those benefits are certified by the service contract provider as "incidental."[6]

[1] Insurance Code §§ 12800-12860
[2] Reg. Z, 12 CFR § 1026.1 et seq.; Civil Code §§ 1794.4, 1794.41, 2982(a)(1)(I)
[3] Insurance Code § 12800(c)(1)
[4] Insurance Code § 12800(c)(1)
[5] Insurance Code § 12800(c)(2),(3),(4), and (5)
[6] Insurance Code § 12800(c)(2)(A)

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Service contract or warranty?

Lawyers and judges have often struggled explaining the difference between service contracts and warranties. This distinction is important because warranty law is tougher on dealers offering express warranties than it is on dealers offering service contracts. At one time, the key distinction between a service contract and a warranty was based on the notion that a separate charge is imposed for a service contract, but not for a warranty. That distinction remains important, but the California Supreme Court in the 2004 case of *Gavaldon v. DaimlerChrysler Corporation*[7] ruled that the words used to label and describe what traditionally would be considered a service contract can transform it into a warranty. In another recent case, *Jones v. Credit Auto Center, Inc.*,[8] the court ruled that a dealer's representations were deceptive where the sales personnel mischaracterized the service contract as a "warranty," and the provisions contained in the service contract referred to it as a "warranty."

DEALER TIP: TERMINOLOGY IS IMPORTANT

Because of the *Galvadon case*, dealership personnel selling service contracts should avoid describing a service contract to a customer as an "extended warranty" or "warranty" or "guarantee" of any type. Service contract forms which use the terms "warranty" or "guarantee" in the text should also be avoided.

Service contract program and form requirements

Vehicle service contracts are not treated as insurance if certain requirements are met and the party obligated under the service contract is a manufacturer, a dealer, or a third party.[9] Before selling a service contract, a dealer should confirm that the program involved complies with the applicable requirements that extend to licensing, form content (including the buyer's right to cancel and receive a refund), notices, and the backing of the service contract obligations by adequate insurance.

Service contract delivery and inspection requirements

Important requirements under California law regarding the delivery and inspection of service contracts are summarized as follows: [10]

- The service contract must be made available for inspection by the buyer prior to purchase.
- Either the service contract or a brochure specifically describing the terms, conditions, and exclusions of the service contract and stating a customer's statutory rights concerning contract delivery, cancellation, and refund must be delivered to the buyer at or before the time the contract is purchased.
- If not delivered at the time of purchase, the service contract itself must be delivered to the buyer within 60 days of the purchase date.

Service contract disclosures in conditional sale contract/lease

The LAW RISC contains the service contract disclosures required under the AFSA and Regulation Z. (See discussion in Chapter 24.) Dealership personnel should be sure to secure the customer's signature in the box on

[7] 32 Cal. 4th 1246
[8] 237 Cal.App.4th Supp. 1
[9] Insurance Code §§ 12805
[10] Civil Code §§ 1794.41

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the contract disclosing the service contract provider's name. In leases, the charge for a service contract should be disclosed in the itemization of gross capitalized cost section.[11]

Service contract refund agreements

Customers are often more comfortable about purchasing a service contract if they are offered a refund of some or all of the purchase price in the event that claims are not made (or are limited by number and/or by dollar value). Dealers, however, should not offer an "informal" refund agreement in connection with the sale of a service contract. To be legally compliant, service contract refund agreements must comply with a number of legal requirements relating to licensing and insurance, including having a third party involved in the process, either as an administrator or an obligor.[12] Dealers should carefully review any proposed service contract refund program and only consider utilizing such a program that complies with these requirements and is supported by properly qualified vendors. This review process is especially important because if an insurer backing a program fails, a participating dealer may face liability for future refunds.

Cancellation of service contract

Purchasers of new vehicles who buy a service contract have 60 days after receipt of the service contract to cancel in writing and receive a full refund. If they have made a claim within the 60-day period after receipt of the contract, or cancellation takes place more than 60 days after receipt of the contract, the refund is calculated pro rata based on either elapsed time or mileage at the option of the dealer or the party obligated under the service contract.[13]

Purchasers of used vehicles not covered by a manufacturer's warranty have 30 days after receipt of the service contract to cancel the contract in writing to receive a full refund. If they have filed a claim within the 30 day period after receipt of the service contract, or cancellation takes place more than 30 days after receipt of the contract, the refund is calculated pro rata based on either elapsed time or mileage at the option of the dealer or the party obligated under the service contract.[14]

Conditional sale contract holder's lien in service contract refunds

Most conditional sale contract forms, including the LAW RISC, provide that the holder of the conditional sale contract has a security interest in any service contract refund and upon receipt of the refund is authorized to apply it against the contract's outstanding balance. If a dealer receives service contract refund proceeds, a request should be made to the holder of the conditional sale contract for instructions on properly reemitting the refund to the holder pursuant to these provisions.

[11] Civil Code § 2985.8(c)(2)(D)
[12] Insurance Code § 12865
[13] Civil Code § 1794.41(a)(4)
[14] Civil Code § 1794.41(a)(4)

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Exclusive right to sell service contracts

Licensed dealers (or holders of a lessor retailer license) are the only entities authorized to sell vehicle service contracts in California.[15]

Factory discrimination based on service contract program prohibited

Under California law, a manufacturer or distributor is prohibited from requiring a dealer to exclusively sell factory approved service contracts or otherwise discriminating against a dealer for selling non-factory approved service contracts.[16] A dealer, however, may be contractually required to give the following specific notice prior to selling a non-factory provided or backed service contract:

> "Service Contract Disclosure
>
> The service contract you are purchasing is not provided or backed by the manufacturer of the vehicle you are purchasing. The manufacturer of the vehicle is not responsible for claims or repairs under this service contract.
>
> _____
>
> Signature of Purchaser"

[15] Insurance Code § 12810
[16] Vehicle Code section 11713.3(x)

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CHAPTER 19: GAP WAIVERS

This chapter discusses compliance issues relative to GAP.

Legal background

California law defines Guaranteed Asset Protection insurance (GAP insurance) as insurance where a purchaser or lessee is indemnified for some or all of the amount owed on his or her vehicle at the time of its unrecovered theft or total loss, after application of insurance proceeds.[1] In addition to this GAP amount, GAP insurance may also include a promise to pay up to $5,000 to an insured to purchase or lease another vehicle.

While an insurance license is required to offer GAP insurance, dealers may offer products described as a guaranteed asset protection waivers ("GAP waiver")[2] or debt cancellation agreements[3] without having an insurance license, as they are excluded from the definition of GAP insurance.[4] These products provide for the waiver of some or all of the following:

- The difference between the actual cash value of a vehicle at the time of its unrecovered theft or total loss and the amount owed on the vehicle pursuant to the conditional sale contract or lease.
- The amount owed on a vehicle at the time of an unrecovered theft or loss, after a credit for the purchaser's or lessee's physical damage insurance proceeds, as well as the deductible amount under the purchaser's or lessee's insurance policy.

Note that although some California statutes refer to these products as "debt cancellation agreements"[5] and other statutes refer to them as "GAP waivers" (with "GAP waiver" being specifically defined[6]), these products are likely to be construed as basically the same. For purposes of this Manual, both products are covered by the designation "GAP waiver."

A GAP waiver cannot result in the payment of money to or a credit balance in favor of the vehicle purchaser or lessee *on top of* the GAP and insurance deductible waiver. A product that does so would be considered GAP *insurance*. However, a GAP waiver *can* provide for a discount or credit to a buyer or lessee as an incentive to purchase or lease a replacement vehicle from the dealer that sold or leased the original vehicle.

Limitations on sale of GAP waivers

A dealer cannot condition the extension of credit, the term of credit, or the terms of a conditional sale contract on the purchase of a GAP waiver.[7] Beginning January 1, 2023, the price of a GAP waiver cannot exceed 4% of

[1] Insurance Code § 1758.992(h)
[2] Civil Code § 2981(t)
[3] Insurance Code § 1758.992(h)(2)(A)
[4] Insurance Code § 1758.992(h)(2)
[5] Insurance Code § 1758.992(h)(2)(A)
[6] Civil Code § 2981(t)
[7] Civil Code § 2982.12(a)(3)

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the amount the buyer finances under the sale contract.[8] For example, the price of a GAP waiver covering a contract with an amount financed of $40,000 may not exceed $1,200.

In addition, a GAP waiver may not be sold if the amount financed under a sale contract is less than 70% of the manufacturer's suggested retail price for a new motor vehicle or the average retail value for a used motor vehicle, as determined by a nationally recognized pricing guide.[9] California law states that a nationally recognized pricing guide includes, but is not limited to, Kelley Blue Book, Edmunds, the Black Book, or the National Automobile Dealers' Association (NADA) Guide.[10]

In other words, a GAP waiver may not be sold if a buyer makes a downpayment of more than 30% of either (1) the manufacturer's suggested retail price for a new motor vehicle, or (2) the average retail value for a used motor vehicle determined by a nationally recognized pricing guide.

New Vehicles

MSRP	Downpayment	Downpayment Percentage of MSRP	Can GAP Wavier be sold (<30%)?*
$57,995	$15,000	25.9%	Yes
$57,995	$20,000	34.5%	No

Used Vehicles

Average Retail Value based on National Pricing Guide	Downpayment	Downpayment Percentage of MSRP	Can GAP Waiver be sold (<30%)?*
$35,471	$10,000	28.2%	Yes
$35,471	$11,000	31.0%	No

* Assuming cost of GAP does not exceed 4% of the amount financed, and the GAP waiver meets other requirements below.

In addition, a GAP waiver may not be sold if the maximum amount covered by the GAP waiver does not cover all of the amount financed under the sale contract. Furthermore, a GAP waiver may not be sold if the sale contract's loan-to-value ratio exceeds the maximum loan-to-value ratio covered by the GAP waiver, unless the terms of the GAP waiver conspicuously disclose the maximum loan-to-value ratio limitation, including the method by which the limitation is applied, and the dealer obtains a separate written acknowledgement signed by the buyer disclosing that the amount financed in the sale contract exceeds the GAP waiver's maximum loan-to-value limitation and therefore it will not cover the total amount owed on the sale contract.[11] The "loan-to-value ratio" means the total amount financed through a sale contract as a percentage of the manufacturer suggested retail price for a new motor vehicle or the average retail value for a used vehicle, as determined in one of the

[8] Civil Code § 2982.12(a)(5)(A)
[9] Civil Code § 2982.12(a)(5)(B)(iii)
[10] Vehicle Code § 11950(c)(2)
[11] Civil Code § 2982.12(a)(5)(B)(ii)

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aforementioned nationally recognized pricing guides. Dealers should adopt practices regarding the sale of GAP waivers that comply with these various requirements.

Disclosures that dealers must provide to buyers

New requirements provide that GAP waivers must be in a separate document from the sale contract (typically an "addendum") signed by the buyer, which contains specified legal disclosures, including the following:

- That the GAP waiver is an optional addition to the sale contract;
- That the holder of the sale contract is the contracting party to the GAP waiver;
- The name and mailing address of the seller and any third-party administrator known at the date of the sale; and
- That the purchase of a GAP waiver cannot be required to get financing, certain financing terms, or certain terms for the sale of a vehicle.[12]

These disclosures are typically included in the GAP waiver "addendum" prepared by GAP program vendors. As noted below, dealers should check with their GAP program vendors to ensure that these specified disclosures are contained in the GAP waiver addendum they will use.

Issues relating to assignment of contract

GAP waivers remain part of the sale contract upon assignment, sale, or transfer of the sale contract.[13] When the sale contract which includes a GAP waiver is assigned, written notice of the assignment of both the sale contract and the GAP waiver, and the assignee's name and mailing address, must be provided to the buyer by mail or by a means of notice that the buyer previously agreed to within 30 days of the assignment.[14] Typically this notice is given by the finance company to whom the sale contract is assigned.

Avoid sale of GAP waivers to active-duty service members

A new law effective January 1, 2023 voids a security interest in a motor vehicle if the vehicle is purchased by a "covered member" of the military and the loan also funds the purchase of a "credit insurance product or credit-related ancillary product."[15] A "covered member" includes active-duty members of the armed forces or reserves, their spouses and dependents.[16] Although the terms "credit insurance product" and "credit-related ancillary product" are not defined, this language is reasonably interpreted to preclude the inclusion of GAP waivers in sales contracts involving active-duty service members. Thus, dealers should refrain from offering GAP waivers to active-duty members of the military and their spouses and dependents (see discussion in Chapter 10).

Holder requirements for payoff quotes and refunds

The holder of a sale contract is typically the finance company to whom the sale contract is assigned, however the dealer is the holder if the dealer does not or is unable to assign the sale contract. A holder is subject to

[12] Civil Code § 2982.12(a)(4)(A) and (B)
[13] Civil Code § 2982.12(a)(2)
[14] Civil Code § 2982.12(a)(4)(B)(i)
[15] Military and Veterans Code § 408.1(c)
[16] 10 U.S.C. § 987(i)(1); Military and Veterans Code § 408.1(a)

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certain new requirements. Specifically, when the holder of a sale contract that includes a GAP waiver provides a payoff letter or payoff quote to the customer, it must provide specified disclosures regarding the unearned portion of the GAP waiver to which the buyer is entitled a refund on a pro rata basis.[17] A GAP waiver can be terminated at any time without penalty, and the buyer is entitled to a full refund of all GAP waiver charges plus all finance charges if it is terminated (or the loan is paid off) in the first 30 days, or a refund of the unearned portion of the charges on a pro rata basis if it is terminated (or the loan is paid off) after 30 days.[18] The holder must tender or initiate the refund within 60 days of the termination of the GAP waiver.[19]

GAP waivers as a finance charge?

Because GAP waivers do not make sense in a cash transaction, including such products in a sale contract could conceivably be considered as a finance charge. (See discussion in Chapter 17.) However, federal Regulation Z provides that charges for voluntary debt cancellation agreement products like GAP waiver (whether it is insurance or not) are not considered a finance charge as long as the product is optional, the optional nature of the product is disclosed in writing, and the customer signs a request for the GAP waiver.[20] All of these requirements are satisfied by proper completion of the "Optional Debt Cancellation Agreement" or "Guaranteed Asset Protection Waiver" box on the LAW RISC (See discussion in Chapter 24).

GAP waiver disclosure issues

The California Automobile Sales Finance Act (ASFA) not only specifies where GAP waiver charges should be disclosed in the conditional sale contract, but also requires the disclosure of GAP waiver charges in the pre-contract disclosure statement as discussed in Chapter 22.[21] With respect to leases, the California Vehicle Leasing Act (CVLA) specifies where GAP waiver charges should be separately disclosed in a lease. If a lease provides that a lessee is liable for the GAP amount, a "GAP Liability Notice" is required.[22] Many leasing companies provide in their lease agreements that the GAP amount is waived without additional charge.

Investigate GAP waivers

Under most GAP waivers, the dealer/creditor agrees to waive/pay for the GAP amount if a triggering event occurs, but the GAP program vendor indemnifies the dealer/creditor. Vendor agreements that state the terms of this coverage vary widely as do the vendor forms supplied to dealers for use in offering GAP waiver products to customers. Before committing to a GAP program, dealers should conduct a thorough program review, including reviewing the GAP waiver "addendum" prepared by the GAP program vendor, to ensure (1) that the GAP waiver is in the name of the dealer/creditor, (2) that the coverage provided under the program is adequate to indemnify the dealer/creditor for any GAP claims, and (3) that the GAP waiver addendum contains the specified legal disclosures discussed above. Dealers should also ensure that the finance companies to which they regularly assign sales or lease agreements will accept the GAP program the dealer is considering.

[17] Civil Code § 2982.12(a)(6)
[18] Civil Code § 2982.12(b)(2) and (4)
[19] Civil Code § 2982.12(b)(3)
[20] Reg. Z, 12 CFR § 1026.1 et seq.; 12 CFR § 226.4(d)(3)
[21] Civil Code §§ 2982, 2982.2
[22] Civil Code § 2985.8

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GAP waiver disclosures in conditional sale contracts

The LAW RISC contains the disclosures required by both Regulation Z and ASFA relative to GAP waiver products. Dealers should be sure to complete these disclosures and secure the customer signature in the "Optional Debt Cancellation Agreement" or "Guaranteed Asset Protection Waiver" box.

Single document rule

The single document rule relating to retail contracts requires that all agreements respecting the cost and terms of payment for a motor vehicle to be contained in the conditional sale contract. Because GAP waivers affect the terms of payment for the vehicle, steps must be taken to incorporate the GAP waiver into the conditional sale contract so it is not a separate document. To accomplish this, dealers should follow the key steps to incorporate a debt cancellation agreement by reference. (See discussion in Chapter 26.) The first step is to physically attach the GAP waiver to the conditional sale contract. The second step is to integrate the GAP waiver into the conditional sale contract by including a statement in the conditional sale contract that the GAP waiver document is part of the contract. The LAW RISC facilitates this process by stating in the "Optional Debt Cancellation Agreement" or "Guaranteed Asset Protection Waiver" box that the GAP waiver is a part of the conditional sale contract. Most GAP waivers are entitled "addendum" and contain additional language to reflect that they are part of the conditional sale contract.

For leases, a specific statutory exception to the leasing single document rule allows GAP waiver to be separate and apart from the lease.[23]

Spanish and Asian translation required

Chapter 31 discusses when a dealer is required to provide a buyer with a translated copy of a conditional sale or lease contract. Because the GAP waiver is part of the conditional sale contract, a dealer should provide a translated copy of the GAP waiver whenever a translated conditional sale contract is required. With respect to lease transactions involving a translated lease, the conservative compliance approach for dealers is to provide a translated GAP waiver to the lessee.

GAP and leases

GAP waiver benefits are generally included in the lease forms of most lease companies. If that protection is not contained in the lease, the lease must contain a warning on the first page in at least 8-point bold face type advising the lessee of the risk of liability for the GAP amount and that optional coverage for the GAP amount may be available for an additional charge.[24]

[23] Civil Code § 2985.9(c)
[24] Civil Code § 2985.8(j)

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CHAPTER 20: CLEAN VEHICLE INCENTIVES/CAV DECALS

This chapter discusses key components of California's Clean Vehicle Rebate Project, Enhanced Fleet Modernization Program, and HOV Decal Program (including the related Clean Cars 4 All program), Clean Fuel Reward, the federal Clean Vehicle Credit, and CAV Decal Program. These programs are continuing to evolve, and so dealers should stay informed of any changes by frequently checking the applicable websites referenced below.

Legal background

Under California law, the California Air Resources Board (CARB) administers the Air Quality Improvement Program (AQIP) which includes the Clean Vehicle Rebate Project (CVRP).[1] This project provides rebates to qualifying individuals, businesses, public agencies, and non-profit organizations in connection with the purchase or lease of certain plug-in hybrid and zero-emission vehicles. The Enhanced Fleet Modernization Program (EFMP) is a program administered by the ARB and the Bureau of Automotive Repair (BAR) which is designed to reduce smog-forming pollutants and greenhouse gas emissions by incentivizing lower-income individuals to retire older vehicles and replace them with newer, more fuel-efficient vehicles.[2] Incentives under this program are currently available to residents of the Sacramento Metropolitan Air Quality Management District, the San Joaquin Valley Air Pollution Control District, the South Coast Air Quality Management District, and the San Diego County Air Pollution jurisdiction, however it is expected that the program will be expanded statewide.[3] The Clean Fuel Reward (CFR) which was recently suspended, is another program administered by the ARB providing rebates for the purchase or lease of certain light-duty all-battery electric vehicles and plug-in hybrid electric vehicles. The federal Clean Vehicle Credit is a program providing federal tax credits for certain new electric, plug-in hybrid and fuel cell electric vehicles assembled in North America.

[1] Health and Safety Code § 44274.6
[2] Health and Safety Code §§ 44125, 44124, 44124.5, 44125.5, 44127, and 44258.4
[3] https://www.arb.ca.gov/cc4a-implementing-air-districts

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CVRP

Vehicles eligible for rebates under the CVRP include light-duty zero-emission and light-duty plug-in hybrid electric vehicles. The light-duty zero-emission vehicles (ZEVs) include electric drive, all-battery electric vehicles (BEVs), and fuel-cell electric vehicles (FCEVs) with a gross vehicle weight rating up to 10,000 pounds. Plug-in hybrid electric vehicles (PHEVs) are vehicles with zero-emission vehicle range capability, an on-board electrical energy storage device, and an on-board charger. PHEVs must also be rechargeable from an external connection to an off-board electrical source. Vehicles must have an all-electric range of 35 miles or more to be eligible for the program. Vehicles eligible for rebates are listed on the CVRP website at www.cleanvehiclerebate.org. The listed vehicles need to be "new," although demonstrators and certain unwind and rollback vehicles may be eligible. With the exception of FCEVs, vehicles in the "large vehicle" category (including minivans, pickups and SUVs) must have a base MSRP of $60,000 or less and vehicles in the "cars" category (including hatchbacks, sedans, wagons, and two-seaters) must have a base MSRP of $45,000 or less.

DEALER TIP:
NO REBATE GUARANTEE
Dealership personnel should not make statements that could be construed as guaranteeing that a customer will receive a CVRP rebate. Instead, dealership personnel should communicate that a customer may be eligible and refer them to the CVRP website for information on rebate eligibility requirements.

Individual vehicle buyers or lessees are eligible for a CVRP rebate as a result of their purchase or lease of a qualifying PHEV or ZEV if their gross annual income does not exceed $135,000 for single filers, $175,000 for head-of-household filers, and $200,000 for joint filers.[4] These income restrictions, which are currently applicable through February 24, 2022, do not apply to the purchase or lease of eligible vehicles in the FCEV category. CVRP guidelines provide that individuals must retain ownership of any vehicle that qualified for a rebate for at least 30 months. If that requirement is not met, the rebate must be paid back.

The rebate amount available under the CVRP to qualifying buyers or lessees ranges from $1,000 to $7,000. An eligible buyer or lessee must submit a rebate application within 3 months of the purchase or lease of the eligible vehicle and the applicable rebate is paid within 90 days of approval of the application (if the funds are available). A complete overview of the CVRP, including a list of rebate amounts for eligible vehicles and how the program applies to businesses, is contained in the CVRP Implementation Manual available on the CVRP website, https://cleanvehiclerebate.org/en. San Diego and the San Joaquin Valley participate in the "Rebate Now" program which provides rebates that qualified customers may use as part of a vehicle downpayment. When customers utilize the "Rebate Now" program, dealers need to disclose this rebate on line 6F of the LAW RISC (or line 6G or 6H if additional space is needed depending on the number of rebates involved). Further changes to the CVRP program are expected, and so dealers should take care when speaking to customers about program eligibility.

[4] Health and Safety Code § 44274.6; https://cleanvehiclerebate.org/en/eligibility-guidelines

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EFMP and CC4A

The EFMP contains two component programs: vehicle retirement only and scrap and replace. In 2019, the vehicle retirement only program was expanded statewide so that individuals who meet specified low-income qualifications can receive vehicle retirement incentives. The related Clean Cars 4 All program (formerly called the EFMP Plus-Up project) provides substantial incentives to lower-income individuals residing within specified air districts who replace their older internal combustion vehicles with a newer hybrid or electric vehicle.[5] A complete overview of rules and procedures applicable to the EFMP is available at www.airquality.org/SacCleanCars4All for Sacramento, www.baaqmd.gov/funding-and-incentives/residents/clean-cars-for-all for the Bay Area, www.valleyair.org/driveclean for the San Joaquin Valley, https://xappprod.aqmd.gov/RYR for the South Coast area of Southern California, and https://www.sdapcd.org/content/sdapcd/grants/grants-equipment/passenger-vehicles.html for San Diego. It is expected that the Clean Cars 4 All program will be expanded to all districts statewide in 2023.

DEALER TIP: PROGRAM FAMILIARITY

Dealer personnel located within the applicable geographical areas should have familiarity with the EFMP so they can direct customers who may be eligible under the program to the appropriate website for more information.

DEALER TIP: HOV STICKER EXPIRATION DATES

Depending on when issued, HOV stickers have different expiration dates. Decals issued between January 1, 2017 and January 1, 2019 expire January 1, 2019, although an application may be made to extend the expiration date to January 2022.[5] It is a good practice for dealership personnel to alert customers inquiring about HOV stickers as to the applicable expiration date.

CFR

Since its implementation in November 2020, the ARB originally provided point-of-sale rebates of up to $1,500 for eligible vehicles purchased or leased at participating dealerships through the California Clean Fuel Reward (CFR) program. The eligible vehicles included light-duty BEVs and PHEVs with a minimum battery capacity of five kilowatt-hours. However, due to funding constraints the rebate amount was decreased to $750 in 2021, and the program was entirely suspended in August 2022. The future of the program is currently unclear. Additional information regarding the program is available at https://cleanfuelreward.com/.

CAV decals for HOV lanes

Customers who purchase or lease certain low-emission vehicles[6] are able to obtain Clean Air Vehicle (CAV) decals and a CAV identification card, which allows single occupancy use of lanes designated for high-occupancy vehicles (HOVs) / carpools.[7] The CAV decal program is run by the DMV in partnership with CARB. Customers who purchase or lease a BEV or PHEV on or after January 1, 2018 are eligible for a CAV decal. Customers whose gross annual income is below $150,000 for single filers, $204,000 for head-of-household filers, and $300,000 for joint filers, may be eligible for both a CAV decal and a CVRP rebate.[8] For customers who purchase or lease

[5] https://www.arb.ca.gov/our-work/programsclean-cars-4-all
[6] A list of eligible vehicles is available for review at CARB's website: www.arb.ca.gov/our-work/programs/carpool-stickers/about
[7] Vehicle Code §§ 5205.5 and 21655.9
[8] Health and Safety Code § 44274.6: https://www.dmv.ca.gov/portal/verhicle-registration/license-plates-decals-and-placards/clean-air-vehicle-decals-for-using-carpool-lanes/

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a FCEV, and whose gross annual income is above those levels, they must choose between either a CAV decal or a CVRP rebate. A summary of the eligibility requirements for CAV decals is contained in the following the chart prepared by the DMV.[9] Individual CAV decals expire on January 1st of the fourth year after the year they are issued. The CAV decal program is set to expire on September 30, 2025.

Gross Annual Income	BEVs and PHEVs	FCEVs
AT or ABOVE • $150,000 for single filers • $204,000 for head-of-household filers • $300,000 for joint filers	CAV Decal ***ONLY***	CAV Decal ***OR*** CVRP (New owner has 60 days from date of purchase to choose between two programs)
UNDER • $150,000 for single filers • $204,000 for head-of-household filers • $300,000 for joint filers	CAV Decal ***AND*** CVRP	CAV Decal ***AND*** CVRP

There is also a low income-based CAV decal program, valid until January 1, 2024, for customers who purchase a used vehicle that was previously issued a CAV decal prior to January 1, 2017. Customers must meet the following criteria to qualify for the program: (1) the new, current registered owner is not the owner of the vehicle when the CAV decal that was issued prior to January 2017 expired; (2) the purchaser's total annual household income is below a specified level; and (3) the new registered owner name(s) match DMV records. Details for this program can be found at the DMV's website, https://www.dmv.ca.gov/portal/vehicle-registration/license-plates-decals-and-placards/clean-air-vehicle-decals-for-using-carpool-lanes/.

Federal clean vehicle credit

The newly enacted federal Inflation Reduction Act provides a tax credit of up to $7,500 for the purchase of certain new PHEVs and FCEVs that underwent final assembly in North America.[10] To qualify for the credit, a vehicle must have a gross vehicle weight rating of less than 14,000 pounds,[11] the battery must have a capacity of at least 7 kilowatt hours,[12] and PHEVs (but not FCEVs[13]) must be made by a qualified manufacturer.[14] Half of the credit ($3,750) is contingent on meeting critical mineral requirements,[15] and the other half ($3,750) is

[9] The chart can be found at the DMV's website: https://www.dmv.ca.gov.portal/vehicle-registration/license-plates-decals-and-placards/clean-air-vehicle-decals-for-using-carpool-lanes/
[10] 26 U.S.C. § 30D
[11] 26 U.S.C. § 30D(d)(1)(E)
[12] 26 U.S.C. § 30D(d)(1)(F)(i)
[13] IRS Rev. Proc. 2022-42
[14] 26 U.S.C. § 30D(d)(1)(C); A list of qualifying vehicles is available at https://www.irs.gov/credits-deductions/manufacturers-and-models-for-new-qualified-clean-vehicles-purchased-in-2023-or-after
[15] 26 U.S.C. §§ 30D(b)(2) and 30D(e)(1)

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contingent on meeting battery component requirements.[16] The MSRP cap for new vehicles is $80,000 for SUVs, pickups and vans, and $55,000 for other vehicles.[17] The credit is not available for those with annual earnings exceeding $150,000 for single filers, $225,000 for head-of-household filers, and $300,000 for joint filers.[18]

In addition, a $4,000 tax credit is available for certain used PHEVs and FCEVs purchased from a dealer with a price cap of $25,000.[19] The amount of the credit is 30% of the sale price up to a maximum credit of $4,000.[20] The credit is not available for those with annual earnings exceeding $75,000 for single filers, $122,500 for head-of-household filers, and $150,000 for joint filers.[21] There is also a $7,500 credit available for commercial motor vehicles with a price cap of $40,000.[22] When buyers utilize the federal clean vehicle credit, dealers need to disclose this credit on line 6F of the LAW RISC (or line 6G or 6H if additional space is needed depending on the number of rebates involved).

At the time of sale, dealers are required to provide buyers with a report with the following information: (1) the dealer's name and tax identification number; (2) the buyer's name and taxpayer identification number, (3) the VIN, (4) the vehicle's battery capacity, (5) the date of sale, (6) the sale price, (7) an attestation that the vehicle's original use commences with the buyer, and (8) the maximum credit allowed for the vehicle.[23] The report must also be provided to the IRS by January 15 of the year following the purchase.[24] Sample report forms prepared by NADA for the sale of new vehicles (IRC Section 30D report) and used vehicles (IRC Section 25E report) shown below can be used to satisfy this reporting requirement.

Beginning on January 1, 2024, buyers can transfer their credit to the dealer and the value of the credit can be applied at the point-of-sale, if the dealer has registered for this program with the IRS. Dealers will receive cash for the transferred credits or they can offset the amount of transferred credits against their federal tax liability. Vehicles placed in service after January 1, 2024 are not eligible for the credit if any battery components are manufactured or assembled by a "foreign entity of concern,"[25] and vehicles placed in service after January 1, 2025 are not eligible for the credit if any critical minerals contained in the battery are extracted, processed, or recycled by a "foreign entity of concern."[26] For buyers who transfer their credit, the dealer must include the following additional information in the report to both the buyer and the IRS: (1) the MSRP, (2) the value of the credit allowed and any other incentive available for the purchase of the vehicle, and (3) the amount provided to the buyer for the transferred credit, whether in cash or in the form of a partial payment or down payment for the purchase of the vehicle.[27]

[16] 26 U.S.C. § 30D(b)(3) and (e)(2)
[17] 26 U.S.C. § 30D(f)(11)(B)
[18] 26 U.S.C. § 30D(f)(10)(B)
[19] 26 U.S.C. § 25E
[20] 26 U.S.C. § 25E(a)
[21] 26 U.S.C. § 25E(b)(2)
[22] 26 U.S.C. § 45W
[23] 26 U.S.C. § 30D(d)(1)(H); IRS Rev. Proc. 2022-42
[24] IRS Rev. Proc. 2022-42
[25] 26 U.S.C. § 30D(d)(7)(B)
[26] 26 U.S.C. § 30D(d)(7)(A)
[27] 26 U.S.C. § 30D(g)(2)(B)

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The federal tax credit program is scheduled to expire on December 31, 2032. Additional information regarding the federal tax credit program is available at www.fueleconomy.gov and https://afdc.energy.gov/laws.electric-vehicles-for-tax-credit.

Applying ZEV Incentives on the Conditional Sales Contract

As discussed in Chapter 24, there are three lines on the conditional sales contract where zero emission vehicle incentives can be described and itemized if they are applied point of sale. If a customer qualifies for multiple incentives at the time of sale, the incentives should be itemized on separate lines. Although not required by law, separate itemization will make it easier for administrators of the incentive programs to review the contract to ensure that the proper incentive amount was applied to the contract.

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2023 IRC Section 30D Clean Vehicle Tax Credit Seller Report

Seller should provide a completed report to Taxpayer-Purchaser at time of sale, retain a copy with the sales paperwork, and retain a separate copy in a Clean Vehicle Tax Credit file for submission to the IRS by Jan. 15, 2024.

Date of Sale: _____
Vehicle VIN: _____
Vehicle Battery Capacity: _____kWh *or* Fuel Cell Electric Vehicle ____Yes
Vehicle's Original Use Commences with Taxpayer-Purchaser: ____Yes
Vehicle's Maximum Clean Vehicle Tax Credit: _____

Seller Declaration

Under penalties of perjury, I declare that I have examined this report, to be submitted to the IRS pursuant to Revenue Procedure 2022-42 by [insert name of Seller], and to the best of my knowledge and belief I certify that this report is true, correct, and complete.

Authorized Dealership Employee Signature: _____
Authorized Dealership Employee Name: _____
Dealership Name: _____
Dealership Tax I.D.: _____

Taxpayer-Purchaser Attestation

Taxpayer-Purchaser acknowledges receipt of this clean vehicle tax credit report, acknowledges that Seller is not providing tax advice, certifies that the vehicle is being acquired for use or lease in the U.S. and not for resale, and certifies that all information provided by him/her is true, correct, and complete.

Taxpayer-Purchaser Signature: _____
Taxpayer-Purchaser Name: _____
Taxpayer-Purchaser Tax I.D.: _____

This report is necessary for a Taxpayer-Purchaser to claim a federal IRC Section 30D Clean Vehicle tax credit. To claim a credit, Taxpayer-Purchasers must meet several qualifications. For information on these qualifications, see: www.irs.gov/credits-deductions/clean-vehicle-credit-seller-or-dealer-requirements. Taxpayer-Purchaser should consider consulting a CPA or tax attorney before claiming a credit.

SAMPLE

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2023 IRC Section 25E Previously Owned Clean Vehicle Tax Credit Report

Seller should provide a completed report to Taxpayer-Purchaser at time of sale, retain a copy with the sales paperwork, and retain a separate copy in a Clean Vehicle Tax Credit file for submission to the IRS by Jan. 15, 2024.

Date of Sale: _____
Vehicle Sales Price: _____ (cannot exceed $25,000).
Vehicle VIN: _____
Vehicle Battery Capacity: _____kWh *or* Fuel Cell Electric Vehicle ____ Yes
Vehicle's Original Use *Did Not* Commence with the Taxpayer-Purchaser: ____Yes
Vehicle's Maximum Previously Owned Clean Vehicle Tax Credit: _____

Seller Declaration

Under penalties of perjury, I declare that I have examined this report, to be submitted to the IRS pursuant to Revenue Procedure 2022-42 by [insert name of Seller], and to the best of my knowledge and belief I certify that this report is true, correct, and complete.

Authorized Dealership Employee Signature: _____
Authorized Dealership Employee Name: _____
Dealership Name: _____
Dealership Tax I.D.: _____

Taxpayer-Purchaser Attestation

Taxpayer-Purchaser acknowledges receipt of this previously owned clean vehicle tax credit report, acknowledges that Seller is not providing tax advice, certifies that the vehicle is being acquired for use in the U.S. and not for resale, and certifies that all information provided by him/her is true, correct, and complete.

Taxpayer-Purchaser Signature: _____
Taxpayer-Purchaser Name: _____
Taxpayer-Purchaser Tax I.D.: _____

This report is necessary for Taxpayer-Purchaser to claim a federal IRC Section 25 Previously Owned Clean Vehicle tax credit. To claim a credit, Taxpayer-Purchasers must meet several qualifications. For information on these qualifications, please see: www.irs.gov/credits-deductions/used-clean-vehicle-credit. Taxpayer-Purchasers should consider consulting a CPA or tax attorney before claiming a credit.

SAMPLE

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CHAPTER 21: WARRANTIES/BUYERS GUIDE

This chapter discusses key issues relating to vehicle warranties and the FTC's Buyers Guide.

Legal background

The federal Magnuson-Moss Act and California's Song-Beverly Consumer Warranty Act are key statutes that cover written warranties that apply to vehicles sold for personal, family or household purposes.[1] The California Commercial Code also covers both oral and written warranties that apply to all vehicle sales, including commercial sales and dealer trades.[2] The FTC Used Car Rule regulates dealers regarding the disclosure of information relating to the mechanical condition and warranty coverage of used vehicles, primarily by requiring the prominent display of a completed Buyers Guide form on each used vehicle offered for sale.[3]

DEALER TIP:
REGARDING ORAL STATEMENTS
Dealership personnel should be careful making oral statements to customers regarding a vehicle's performance characteristics (for example, towing capacity or fuel economy claims) that could be construed as an express warranty.

Warranty definition

A warranty is generally described as a commitment by the manufacturer or seller of a product (such as a vehicle) to correct product defects or malfunctions. Customers do not pay a separate charge for a warranty (this is in contrast to a service contract for which a separate charge is made; see discussion of service contracts in Chapter 18). Warranties may be express (meaning terms are stated orally or in writing) or implied (meaning the terms are unspoken or unwritten, but instead are based upon statutory authority). Under California law, the implied warranty of merchantability (which basically means a vehicle is fit for the ordinary purposes for which a vehicle is used) generally applies to all new and used vehicle sales.[4] However, a dealer does have the right of indemnity against a manufacturer for new vehicle sales, and may have the right of indemnity on some used vehicle sales, including certified pre-owned vehicles arising from the implied warranty of merchantability.[5] California law also recognizes the implied warranty of fitness which can apply to the sale of new and used vehicles when the buyer has communicated to dealership personnel that the buyer needs a vehicle for a particular purpose (for example, towing a boat), and the buyer has been advised to purchase a certain vehicle.[6]

DEALER TIP:
AVOID "FULL" WARRANTY DESCRIPTION
Dealership personnel should not describe any warranty that applies to a vehicle (including a manufacturer 's warranty), as a "full" warranty when communicating with customers. Such warranties generally do not meet the legal requirements necessary to be described as a "full" warranty.

[1] 15 U.S.C. § 2301 et seq.; Civil Code § 1790 et seq.
[2] Commercial Code § 2313 et seq.
[3] 16 CFR Part 455
[4] Commercial Code § 2314
[5] Civil Code § 1792; Rodriguez v. FCA US, LLC (2022) 77 Cal.App.5th 209 (review granted, 512 P.3d 654)
[6] Commercial Code § 2315

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Warranty issues

Under federal law, the key legal requirements that apply to written warranties include the following:[7]

- Designating the warranty as "full" or "limited"
- Clearly stating in a single document the warranty coverage terms
- Making the warranty available for review by potential buyers

For a further discussion of warranty issues, see the FTC publication entitled "Businessperson's Guide to Federal Warranty Law" available at: www.ftc.gov.

Availability of warranties to buyers

The requirement that a written warranty be available for review by potential buyers applies to any vehicle, new or used, with a manufacturer or dealer warranty. To comply, dealers must either prominently post signs communicating to customers that the written warranty terms applicable to vehicles being sold are available for review or actually place those written warranty terms in close proximity to the vehicles.[8] (See Chapter 54 for an illustration of such a sign.)

Consumer warranty duration

All express warranties for new vehicles commence on the date of delivery to the customer.[9] Many manufacturers consider the commencement of a new vehicle warranty to be the date the vehicle is reported to the manufacturer as sold, or when the vehicle is put into service. If a vehicle is marked sold before delivery, that warranty clock begins to tick. While manufacturers are making the express warranty on a new vehicle via the factory warranty, to avoid the risk of non-compliance with this law, dealers should be sure not to report to the manufacturer that the vehicle is sold before delivery to the customer.

Additionally, any warranties provided by dealers on used vehicles must commence upon delivery of the vehicle to the customer.[10]

Disclaiming implied warranties

Under both state and federal law, implied warranties for the most part may not be avoided (disclaimed) by a dealer. This is certainly the case when a dealer offers a written warranty on a vehicle or sells a service contract covering the vehicle.[11] Under California law, a dealer basically may only disclaim implied warranties by selling to a consumer a used vehicle "as is" when that designation is conspicuously disclosed in writing prior to the sale (for example, in the sales contract).[12] Dealers must be aware that California law prohibits certified pre-owned

[7] 15 U.S.C. § 2302(b)(1)(A); 16 CFR Part 702
[8] 15 U.S.C. § 2302(b); 16 CFR § 702.3
[9] Civil Code § 1793.01
[10] Civil Code § 1793.01
[11] 15 U.S.C. § 2308(a); Civil Code § 1793
[12] Civil Code § 1792.4; Commercial Code § 2316

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vehicles from being sold "as is".[13] Therefore, dealers should take care that they don't inadvertently use the "as is" version of the Buyers Guide when selling certified pre-owned vehicles.

Dealer right of indemnity against manufacturer

California's Song-Beverly Consumer Warranty Act provides that dealers have a right of indemnity against the manufacturer on any implied warranty of merchantability arising from the sale of a "new" vehicle.[14] The Act defines a "new" vehicle in pertinent part as a vehicle sold with a manufacturer's new car warranty, including dealer-owned vehicles and demonstrator vehicles.[15] Accordingly, dealers indisputably have a right of indemnity against the manufacturer for implied warranty of merchantability claims involving vehicles sold as new, as well as dealer demonstrators and service loaners.

Additionally, dealers likely have the right of indemnity against the manufacturer in connection with the sale of certified pre-owned vehicles certified in accordance with the manufacturer's guidelines.[16]

At present, there is a split of authority as to whether dealers have the right of indemnity against the manufacturer on the sale of used vehicles with remaining factory warranty coverage. For many years, based on the holding in the 1995 case of *Jensen v. BMW of North America, Inc.* that a used vehicle sold with remaining factory warranty coverage was a "new motor vehicle" for purposes of the Song-Beverly Act, manufacturers agreed to indemnify dealers that sold used vehicles with factory coverage remaining.[17] However, a recent spate of appellate court decisions have held that manufacturers are not liable for breach of implied warranty claims on used vehicles sold with remaining factory coverage.[18] One of these cases, *Rodriguez v. FCA US LLC*, has been certified for review by the California Supreme Court. As of the time of publication, the Supreme Court has not yet ruled, and dealers should consult with competent counsel to determine whether you have indemnification rights.

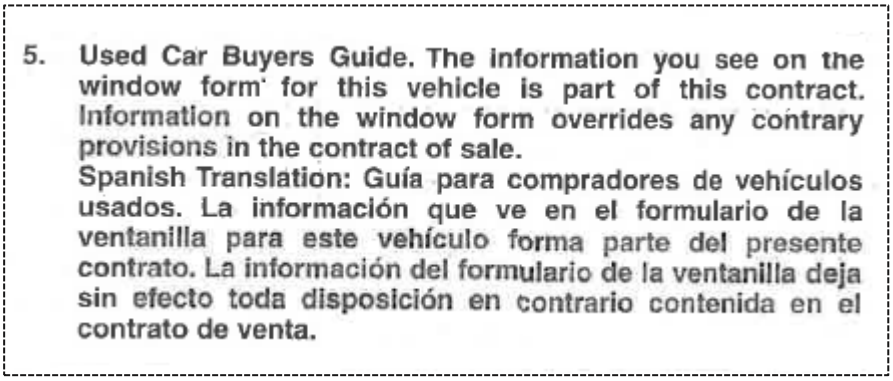
[13] Vehicle Code § 11713.18(a)(8)
[14] Civil Code § 1792
[15] Civil Code § 1793.22
[16] Kiluk v. Mercedes-Benz USA, LLC (2019) 43 Cal.App.5th 334
[17] 35 Cal.App.4th 112
[18] Nunez v. FCA US LLC (2021) 61 Cal.App.5th 385; Rodriguez v. FCA US LLC (2022) 77 Cal.App.5th 209 (review granted, 512 P.3d 654)

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DEALER TIP:
BUYERS GUIDE NOT THE WARRANTY
Dealership personnel should be aware that a Buyers Guide which summarizes warranty terms is not the actual warranty document. A written warranty which includes all of the warranty terms must be a completely separate document which is available for customers to review.

Used Car Rule / Buyers Guide

Under the FTC's Used Car Rule, a dealer selling a used vehicle is prohibited from misrepresenting the mechanical condition of the vehicle and required to disclose whether the dealer is providing a warranty regarding the vehicle (if there is a warranty, a summary of the terms must be disclosed).[19] This disclosure is made by prominently and conspicuously posting a Buyers Guide form on any used vehicle being offered for sale. This form is available from the FTC website www.ftc.gov or other form vendors. The Buyers Guide, which needs to be posted in Spanish whenever the dealer negotiates the sale of used vehicles in Spanish,[20] becomes part of the contract entered into by the dealer and customer.[21] Language in section 5 on the back of the LAW RISC form shown below incorporates the Buyers Guide into the contract. The buyer should receive a copy of the Buyers Guide before the buyer signs the contract.

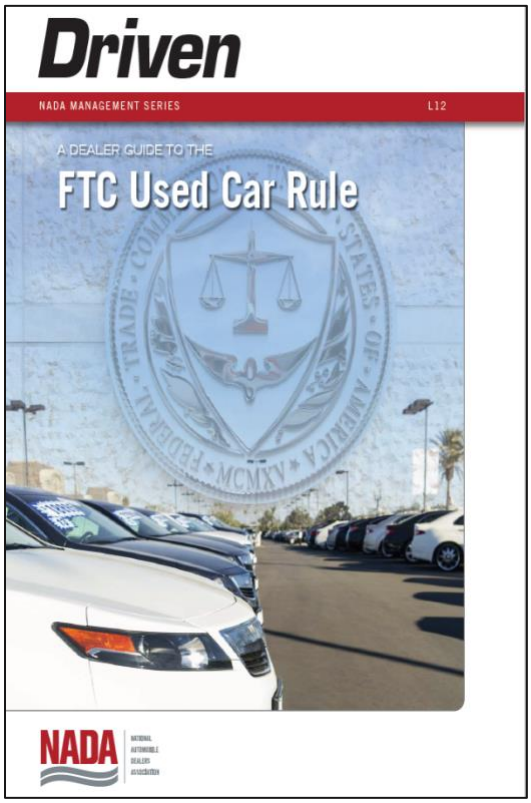


5. **Used Car Buyers Guide.** The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.
Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

[19] 16 CFR Part 455
[20] 16 CFR § 455.5
[21] 16 CFR § 455.3

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Completing the Buyers Guide



Besides disclosing whether a dealer warranty is being given regarding a used vehicle, a dealer needs to consider a number of other choices in filling out a Buyers Guide form. For example, a dealer has a choice of disclosing or not disclosing whether there is a manufacturer's warranty that is still applicable to the vehicle (making this disclosure is made much easier by the revised Buyers Guide form). NADA has developed a guide which includes an informative discussion of these choices. This guide, which is not intended to be legal advice, may be accessed by dealers at www.nada.org (login required).

The FTC publications entitled "Dealer's Guide to the Used Car Rule" and "Answering Dealer's Questions about the Revised Used Car Rule" available at www.ftc.gov are also good resources on how a Buyers Guide form should be completed. A key strategic decision for California dealers is whether to use the "as is" or "implied warranties" version of the Buyers Guide form when a used vehicle is being sold with a remaining portion of a manufacturer's warranty in place that is being disclosed. To avoid legal claims that challenge the "as is" designation of a vehicle with a manufacturer's warranty expressly disclosed by the dealer, dealers should use the "implied warranties only" version of the Buyers Guide (shown below) regarding such vehicles and only use the "as is" version of the form for vehicles with no warranty coverage at all. The "as is" form should never be used in connection with the sale of a certified pre-owned vehicle.[22]



BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE MODEL YEAR VEHICLE IDENTIFICATION NUMBER (VIN)

WARRANTIES FOR THIS VEHICLE:

☐ IMPLIED WARRANTIES ONLY

The dealer doesn't make any promises to fix things that need repair when you buy the vehicle or afterward. But *implied warranties* under your state's laws may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

☐ DEALER WARRANTY

☐ FULL WARRANTY.

☐ LIMITED WARRANTY. The dealer will pay ___% of the labor and ___% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty, and for any documents that explain warranty coverage, exclusions, and the dealer's repair obligations. *Implied warranties* under your state's laws may give you additional rights.

SYSTEMS COVERED: DURATION:

NON-DEALER WARRANTIES FOR THIS VEHICLE:

☐ MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on some components of the vehicle.

☐ MANUFACTURER'S USED VEHICLE WARRANTY APPLIES.

☐ OTHER USED VEHICLE WARRANTY APPLIES.

Ask the dealer for a copy of the warranty document and an explanation of warranty coverage, exclusions, and repair obligations.

☐ SERVICE CONTRACT. A service contract on this vehicle is available for an extra charge. Ask for details about coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of your purchase of this vehicle, *implied warranties* under your state's laws may give you additional rights.

ASK THE DEALER IF YOUR MECHANIC CAN INSPECT THE VEHICLE ON OR OFF THE LOT.

OBTAIN A VEHICLE HISTORY REPORT AND CHECK FOR OPEN SAFETY RECALLS. For information on how to obtain a vehicle history report, visit ftc.gov/usedcars. To check for open safety recalls, visit safercar.gov. You will need the vehicle identification number (VIN) shown above to make the best use of the resources on these sites.

SEE OTHER SIDE for important additional information, including a list of major defects that may occur in used motor vehicles.

Si el concesionario gestiona la venta en español, pídale una copia de la Guía del Comprador en español.



Here is a list of some major defects that may occur in used vehicles.

Frame & Body
Frame—cracks, corrective welds, or rusted through
Dog tracks—bent or twisted frame

Engine
Oil leakage, excluding normal seepage
Cracked block or head
Belts missing or inoperable
Knocks or misses related to camshaft, lifters and push rods
Abnormal exhaust discharge

Transmission & Drive Shaft
Improper fluid level or leakage, excluding normal seepage
Cracked or damaged case which is visible
Abnormal noise or vibration caused by faulty transmission or drive shaft
Improper shifting or functioning in any gear
Manual clutch slips or chatters

Differential
Improper fluid level or leakage, excluding normal seepage
Cracked or damaged housing which is visible
Abnormal noise or vibration caused by faulty differential

Cooling System
Leakage including radiator
Improperly functioning water pump

Electrical System
Battery leakage
Improperly functioning alternator, generator, battery, or starter

Fuel System
Visible leakage

Inoperable Accessories
Gauges or warning devices
Air conditioner
Heater & Defroster

Brake System
Failure warning light broken
Pedal not firm under pressure (DOT spec.)
Not enough pedal reserve (DOT spec.)
Does not stop vehicle in straight line (DOT spec.)
Rotors damaged
Drums or rotor too thin (Mfgr. Specs)
Lining or pad thickness less than 1/32 inch
Power unit not operating or leaking
Structural or mechanical parts damaged

Air Bags

Steering System
Too much free play at steering wheel (DOT specs.)
Free play in linkage more than 1/4 inch
Steering gear binds or jams
Front wheels aligned improperly (DOT specs.)
Power unit belts cracked or slipping
Power unit fluid level improper

Suspension System
Ball joint seals damaged
Structural parts bent or damaged
Stabilizer bar disconnected
Spring broken
Shock absorber mounting loose
Rubber bushings damaged or missing
Radius rod damaged or missing
Shock absorber leaking or functioning improperly

Tires
Tread depth: less than 2/32 inch
Sizes mismatched
Visible damage

Wheels
Visible cracks, damage or repairs
Mounting bolts loose or missing

Exhaust System
Leakage
Catalytic Converter

DEALER NAME

ADDRESS

TELEPHONE EMAIL

FOR COMPLAINTS AFTER SALE, CONTACT:

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removing this label before consumer purchase (except for purpose of test-driving) violates federal law (16 C.F.R. 455).

[22] Vehicle Code § 11713.18(a)(8)

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Mileage disclosure regarding warranty start date

DEALER TIP:
COMPLETION OF BUYERS GUIDE
Dealership personnel should take care to make sure that the Buyers Guide form is completed accurately and displayed prominently on the used vehicle to which it applies.

Under California law, if a vehicle warranty covering a vehicle is based upon a mileage limit, the mileage indicated on the vehicle's odometer as of the date it is first sold and delivered as new is when the warranty will commence for the purposes of the mileage limitation.[23] Additionally, a dealer selling a previously unregistered vehicle must disclose in writing to the buyer the date on which the manufacturer's warranty starts.

[23] Civil Code § 1793.01; Vehicle Code § 28052

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PART C. DEAL DOCUMENTATION

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CHAPTER 22: PRE-CONTRACT DISCLOSURE STATEMENT

This chapter discusses the pre-contract disclosure document required by the Car Buyer's Bill of Rights.

Legal background

The California Automobile Sales Finance Act (ASFA) as amended by the Car Buyer's Bill of Rights, requires a signed written pre-contract disclosure of six types of products or services, if charges for those items will be included in the conditional sale contract.[1] The six types of items are service contracts,[2] debt cancellation agreements or guaranteed asset protection (GAP) waiver agreements,[3] contract cancellation option agreements, insurance, theft deterrent devices,[4] and surface protection products.[5] The required written disclosure must identify the charges for each item, a total, a disclosure of the amount of the regular monthly installment payment including the listed items, and the amount of the regular monthly installment payment excluding the listed items.

When required

The disclosures are required in all transactions subject to the ASFA, which includes all purchase transactions using a conditional sale contract or other agreement to purchase a vehicle (i.e., purchase orders). Excluded from the ASFA, and the disclosure requirement, are business and commercial transactions and all unconditional cash transactions – i.e., cash transactions not written as "one-pays" and not secured by a lien or interest in the vehicle. Because they are not subject to ASFA, lease transactions do not need to comply with these pre-contract disclosure requirements.

While "cash" transactions may have some superficial appeal because they are not subject to the written pre-contract disclosure requirement, every "cash" transaction puts the dealer at risk over whether the "cash" will truly be paid to and retained by the dealer. Even secure forms of payment (for example, currency or wire transfers) are not foolproof in every case. Cashier's checks, company checks, and personal checks certainly are not the same as money in the bank. As a result, the best approach for a dealer, even in deals where the customer pays upfront and in full with a cashier's check, company check, or personal check is to document the transaction as a "one-pay" under a conditional sale contract and to comply with all ASFA requirements, including signing a pre-contract disclosure.

Timing of disclosure

Arguably, timing is the most important compliance issue as the required disclosures must be given before the contract is signed and must also quote actual all-inclusive installment payments – not estimates.[6]

[1] Civil Code § 2982.2
[2] Civil Code § 2981(g)
[3] Civil Code § 2981(t)
[4] Civil Code § 2981(s)
[5] Civil Code § 2981(r)
[6] Civil Code § 2982.2

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Practically speaking, this means the disclosures need to be given immediately before the customer is asked to review and sign the conditional sale contract, and the figures used in the pre-contract disclosure must match those used on the conditional sale contract.

Six product categories subject to mandatory disclosure

The disclosure must list the description and price of each item in the following categories which are defined by statute:

1. Service contracts;
2. Debt cancellation agreements or guaranteed asset protection (GAP) waiver agreements;
3. Vehicle contract cancellation option agreements;
4. Insurance products;
5. Theft deterrent devices (defined below); and
6. Surface protection products (defined below)

Theft deterrent device defined

The law defines a theft deterrent device as any of the following devices installed by the seller after the motor vehicle is sold:[7]

- Vehicle alarm systems;
- Window etch products;
- Body part marking products;
- Steering locks;
- Pedal or ignition locks; and
- Fuel or ignition kill switches.

LoJack® / theft deterrent issues

Following the enactment of the Car Buyer's Bill of Rights, questions were raised regarding whether LoJack® brand devices are considered theft deterrent devices. The main focus of these questions related to "classic" LoJack® devices which serve only to locate vehicles and do not have the alert functionality of LoJack® devices with "early warning" capability. A 2007 California Attorney General opinion addressed these questions and concluded that both LoJack® systems were theft deterrent devices for purpose of the statutory pre-contract disclosure requirements.[8]

Surface protection products

The law defines surface protection product as any of the following products installed by the seller after the motor vehicle is sold:[9]

[7] Civil Code § 2981(s)
[8] 90 Ops. Cal. Atty. Gen. 103 (2007)
[9] Civil Code § 2981(r)

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- Undercoating;
- Rustproofing;
- Chemical or film paint sealants or protectants; and
- Chemical sealants or stain inhibitors for carpet and fabric.

If surface protection products are installed or applied prior to the sale of the vehicle, they should not be separately disclosed, and instead accounted for in the dealer's asking price for the vehicle.

Tire and wheel protection plans

Tire and/or wheel protection plans do not meet the definition of a surface protection product. However, depending upon how these plans are crafted, they may be deemed insurance or vehicle service contracts. A dealer should not sell a tire or wheel protection plan without a solid legal opinion concerning the product's status as insurance, a service contract, or a consumer product accompanied by a warranty. Once the status is known, (and if the dealer still wants to sell the product) the dealer should be sure to make the appropriate disclosure of that type of product (e.g., service contract, insurance, etc.).

Exclusion of preinstalled theft or surface products?

The pre-contract disclosure requirements for surface protection products and theft deterrent devices only apply to products installed by the seller "after the motor vehicle is sold." While the meaning of this phrase is open to a number of interpretations, dealers may wish to disclose any such product, except where the product was already installed, functional, and included in the negotiated price of the vehicle from the inception of price discussions. Such a policy seems especially prudent because many of these products while pre-installed, are actually "activated" or "registered" (for a fee) at the time of sale.

Example form

The Reynolds and Reynolds Pre-Contract Disclosure Form (Form LAWCA-PCD) which follows is designed to allow a dealer to make the disclosures required by the Civil Code and also to provide a means of complying with California's anti-packing laws (see discussion in Chapter 12).

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LAWCA-PCD 3/23

UNIGY | The Reynolds and Reynolds Company | UNIGY

Pre-Contract Disclosure (Retail Installment Sale Contract)

Identification of Parties

Buyer Name(s) ("you")				Contract Date	Buyer's Email
Address: Street		City	State	Zip	Buyer's Telephone
Dealership					Dealer's Telephone

Identification of Vehicle ("Vehicle")

Year	Make	Model	VIN

Optional Goods and Services

The following goods and services are NOT required as a condition to obtaining financing terms for the purchase of the Vehicle.

☐ Optional Theft Deterrent Device(s):
(1) $
(2) $
(3) $

☐ Optional Surface Protection Product(s):
(1) $
(2) $

☐ Optional Service Contract(s):
(1) $
(2) $
(3) $
(4) $
(5) $

☐ Optional Debt Cancellation Agreement or Guaranteed Asset Protection Waiver: $
☐ Optional Vehicle Contract Cancellation Option Agreement: $
☐ Optional Insurance Product: $

Total $

Installment Payment EXCLUDING Listed Items: $
Installment Payment INCLUDING Listed Items: $

THE ABOVE INSTALLMENT PAYMENTS INCLUDE THE ITEMS DESCRIBED ABOVE, THE PRICE OF THE VEHICLE, GOVERNMENT FEES AND TAXES, FINANCE CHARGES, AND THE ADDITIONAL CHARGES SHOWN BELOW.

Other Goods, Services and Miscellaneous Charges

Cash Price of Additional Accessories	$	Emissions Testing Charge	$
Other (Nontaxable)		Prior Credit or Lease Balance	$
	$		
	$	Other (to whom paid)	$
EV Charging Station	$	For:	
Electronic Vehicle Registration or Transfer Charge	$	Other (to whom paid)	$
Document Processing Charge	$	For:	

By signing below, you acknowledge:

- All of the charges described above will be included in the retail installment sale contract accompanying the purchase of the Vehicle.
- This document was presented to you prior to signing the retail installment sale contract and you consent to including all the above charges in the retail installment sale contract.
- The goods and services are NOT required as a condition to obtaining financing terms for the purchase of the Vehicle.

Date Buyer's Signature Co-Buyer's Signature

LAW FORM NO. LAWCA-PCD 3/23 (Rev. 3/23)
© 2023 The Reynolds and Reynolds Company TO ORDER: www.reyource.com; 1-800-344-0996; fax 1-800-521-9065
THE PRINTER MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO CONTENT OR FITNESS FOR PURPOSE OF THIS FORM. CONSULT YOUR OWN LEGAL COUNSEL.

A section by section explanation of the example pre-contract disclosure form follows.

Sections of form

To review the form, it is divided into five sections: identification of parties; identification of vehicle; the specific statutory disclosures; additional anti-packing disclosures; and the acknowledgement and signature section.

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Identification of parties

The Identification of Parties section contains identifying information for the buyer(s) and the dealership. Since dealers must provide the disclosure statement before the contract is signed, the contract date box must never be dated later than the conditional sale contract.

Identification of Parties					
Buyer Name(s) ("you")				Contract Date	Buyer's Email
Address:	Street	City	State	Zip	Buyer's Telephone
Dealership					Dealer's Telephone

Identification of vehicle

The identification of Vehicle section contains information regarding the vehicle being purchased. The entries should be identical to those on the conditional sale contract.

Identification of Vehicle ("Vehicle")			
Year	Make	Model	VIN

Box for optional goods and services –required statutory disclosures

The Optional Goods and Services box below the top section contains the disclosures required by California law.[10] When filling out this section, be sure to –

- List only one item per line – do not combine items on a line.
- List only the items specified; other dealer charges should be disclosed in the Other Goods, Services and Miscellaneous Charges section.
- Quote installment payments with added items to match the final contract.

[10] Civil Code § 2982.2

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Optional Goods and Services

The following goods and services are NOT required as a condition to obtaining financing terms for the purchase of the Vehicle.

☐ Optional Theft Deterrent Device(s):
(1) _____ $ _____
(2) _____ $ _____
(3) _____ $ _____

☐ Optional Surface Protection Product(s):
(1) _____ $ _____
(2) _____ $ _____

☐ Optional Service Contract(s):
(1) _____ $ _____
(2) _____ $ _____
(3) _____ $ _____
(4) _____ $ _____
(5) _____ $ _____

☐ Optional Debt Cancellation Agreement or Guaranteed Asset Protection Waiver: _____ $ _____
☐ Optional Vehicle Contract Cancellation Option Agreement: _____ $ _____
☐ Optional Insurance Product: _____ $ _____

Total $ _____

Installment Payment EXCLUDING Listed Items: $ _____
Installment Payment INCLUDING Listed Items: $ _____

Only six statutory items allowed in optional products and services

Whiles dealers may feel that incorporating additional goods and services into the Optional Goods and Services box is helpful to consumers, they may not do so. The applicable statute specifically states that these categories of items, and *only* these categories of items, are to be included in the required written disclosure.

Both the "excluding listed items" and "including listed items" installment payment quotes in that box must be calculated by including all charges included in the total amount financed in the final contract. The law also specifically states that the "excluding" and "including" installment payment quotes must be identical, but for the fact that the "excluding" installment payment excludes those items, and *only* those items that fall within the six listed categories.

Anti-packing disclosures

Following the Optional Goods and Services box, the example form provides as shown below, a box entitled "Other Goods, Services and Miscellaneous Charges" which allows dealers to disclose other charges for goods or services a dealer has provided. This section is beneficial to dealers in complying with California's anti-packing laws which prohibit a dealer from negotiating the terms of a vehicle sale and then adding charges to the contract without previously disclosing the goods and services to be added and obtaining the consumer's consent.

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THE ABOVE INSTALLMENT PAYMENTS INCLUDE THE ITEMS DESCRIBED ABOVE, THE PRICE OF THE VEHICLE, GOVERNMENT FEES AND TAXES, FINANCE CHARGES, AND THE ADDITIONAL CHARGES SHOWN BELOW.

Other Goods, Services and Miscellaneous Charges			
Cash Price of Additional Accessories	$	Emissions Testing Charge	$
Other (Nontaxable)		Prior Credit or Lease Balance	$
	$		
	$	Other (to whom paid)	$
EV Charging Station	$	For:	
Electronic Vehicle Registration or Transfer Charge	$	Other (to whom paid)	$
Document Processing Charge	$	For:	

The Other Goods, Services and Miscellaneous Charges section reserves space for dealer goods and services that may not be included in the price negotiations before preparation of a contract:

- The Cash Price of Additional Accessories line should be used to list any accessories that are to be separately itemized in the contract on line (1)(A)(2) of the LAW RISC. For example, some dealers separately itemize added accessories when selling a vehicle subject to an advertised price;
- The Other (Nontaxable) lines should be used to disclose nontaxable items listed in the contract on line 1(A)(3) and 1(A)(4) of the LAW RISC;
- The EV Charging Station charge on line 1(F) of the LAW RISC;
- Electronic vehicle registration or transfer charge on line 1(H) of the LAW RISC;
- Document processing charge on line 1(B) of the LAW RISC;
- Emissions testing charge on line 1(C) of the LAW RISC;
- The prior credit or lease balance line should be used to state the amount of any prior credit or lease balance paid by the dealer on a trade-in as shown on lines 1(J) and 1(K) of the LAW RISC; and
- The Other (paid to) line may be used to list any other goods or services to be separately itemized in the contract, or that were never before made known to the buyer, that are not required to be listed in the Optional Goods and Services box, including any item listed on lines 1(N) and 1(O) of the LAW RISC.

Acknowledgement and signature section

The example form uses an acknowledgement section that confirms the customer's understanding of several important facts, including that the form was presented to the buyer prior to his or her signing the conditional sale contract. The signature of the buyer and any co-buyer should be obtained on the form in this section. The original signed form should be retained by a dealer in the deal jacket and a copy of the signed form should be provided to the buyer and any co-buyer.

By signing below, you acknowledge:

- All of the charges described above will be included in the retail installment sale contract accompanying the purchase of the Vehicle.
- This document was presented to you prior to signing the retail installment sale contract and you consent to including all the above charges in the retail installment sale contract.
- The goods and services are NOT required as a condition to obtaining financing terms for the purchase of the Vehicle.

Date Buyer's Signature Co-Buyer's Signature

LAW FORM NO. LAWCA-PCD 3/23 (Rev. 3/23)

© 2023 The Reynolds and Reynolds Company TO ORDER: www.reysource.com; 1-800-344-0996; fax 1-800-531-9055
THE PRINTER MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO CONTENT OR FITNESS FOR PURPOSE OF THIS FORM. CONSULT YOUR OWN LEGAL COUNSEL.

Spanish and Asian-language translation

Chapter 31 discusses when the dealer is required to provide the buyer with a translated copy of the conditional sale contract. Because the pre-contract disclosure is mandated by the ASFA, which in turn is subject to the Spanish/Asian language translation law, it is recommended that a dealer provide a buyer a translated copy of the pre-contract disclosure form whenever a translated conditional sale contract must be provided.

Critical that pre-contract disclosure and contract match

It is absolutely essential that the disclosures on the final, signed version of the pre-contract disclosure form (including the "Installment Payment INCLUDING Listed Items") *precisely* match the items provided on the conditional sale contract at the time of signing. Accordingly, if the customer changes his or her mind after a pre-contract disclosure form is first presented, a revised form must be prepared for the customer's signature before the contract is signed. This process must be repeated by dealership personnel as often as is required to arrive at a final form of pre-contract disclosure that will match the contract exactly. Dealer personnel should be trained to closely inspect the two documents prior to handing the conditional sale contract to the customer for review and signature.

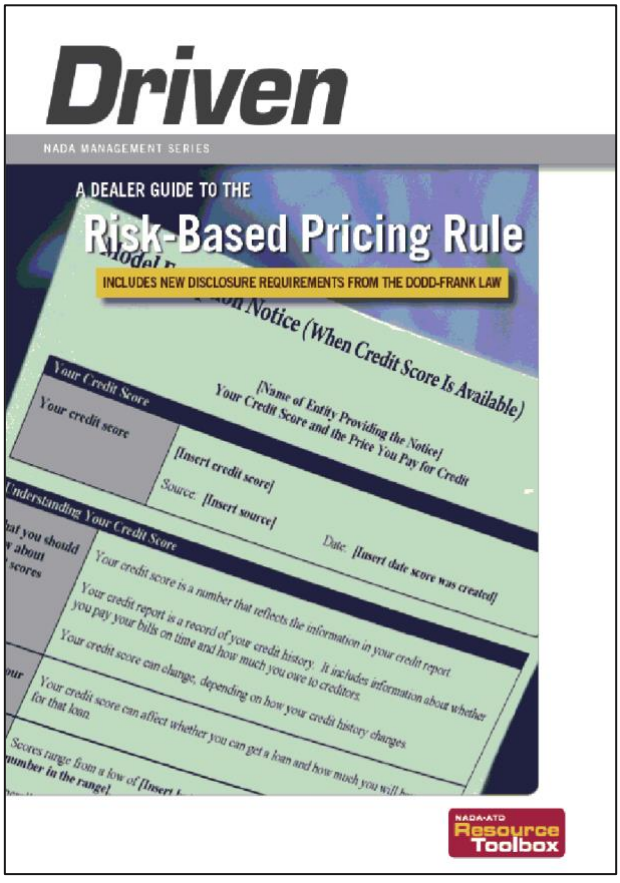
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CHAPTER 23: CREDIT SCORE DISCLOSURE/RISK BASED PRICING RULE

This chapter discusses the federal Risk-Based Pricing Rule and the requirements that dealers provide credit score disclosure documents to purchase and lease customers.

Legal background

On January 1, 2011, Federal Trade Commission (FTC) and Federal Reserve Board (FRB) regulations took effect requiring dealers and other financial institutions to provide a "Risk-Based Pricing Notice" to consumers who receive credit on "terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through that [financial institution]."[1] While the content of the notice is fairly simple, determining which consumers were to receive this notice involved extremely complicated and burdensome calculations. An exception is provided in the regulation for creditors who provide *every person who applies for credit* with a standardized notice (designated as the "Exception Notice") disclosing the applicant's credit score, the range of possible credit scores, a bar graph or percentile ranking showing how the consumer's credit score compares to others with additional related information, and other disclosures.



For years, California law has required dealers to provide a written credit score disclosure notice prior to the sale or lease of a vehicle for personal use, whenever the dealer obtains a credit score from a credit reporting agency for use in the application for credit.[2] This law was amended to allow dealers to provide forms meeting the federal requirements for each score obtained. Unlike the federal law, California dealers must provide the credit score for both credit sale and lease transactions. While federal law allows dealers pulling multiple credit scores to provide a notice for one of the scores, California law requires dealers to provide a notice for *each* score used.

[1] 16 CFR Part 640
[2] Vehicle Code § 11713.20

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NADA Management Guide: "Risk-Based Pricing Rule"

NADA has extensively studied this subject and developed a guide entitled "A Dealer Guide to the Risk-Based Pricing Rule" which provides guidance to dealers in their compliance efforts.

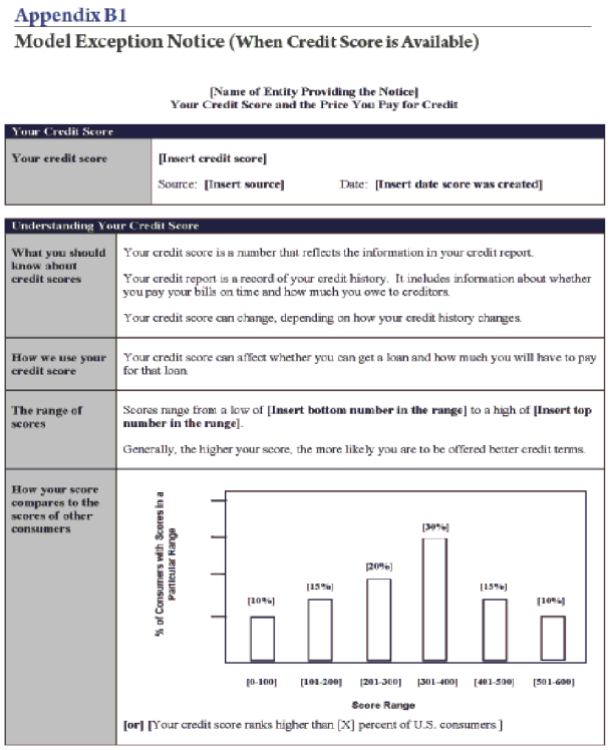
This guide, which is not intended as legal advice, may be accessed at: www.nada.org (login required).

The Model Exception Notice

The Model Exception Notice, which should be provided for each score obtained and used by a dealer, is reproduced on the next page. The regulations also provide a Model Alternative Exception Notice (not shown) for use when a credit score is unavailable.

Model Exception Notice (When Credit Score is Available)

Form – Appendix B1 to the NADA Guide



Appendix B1

Model Exception Notice (When Credit Score is Available)

[Name of Entity Providing the Notice]
Your Credit Score and the Price You Pay for Credit

Your Credit Score	
Your credit score	[Insert credit score] Source: [Insert source] Date: [Insert date score was created]

Understanding Your Credit Score	
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. Your credit score can change, depending on how your credit history changes.
How we use your credit score	Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.
The range of scores	Scores range from a low of [Insert bottom number in the range] to a high of [Insert top number in the range]. Generally, the higher your score, the more likely you are to be offered better credit terms.
How your score compares to the scores of other consumers	% of Consumers with Scores in a Particular Range [10%] [15%] [20%] [30%] [15%] [10%] [0-100] [101-200] [201-300] [301-400] [401-500] [501-600] Score Range **[or]** [Your credit score ranks higher than [X] percent of U.S. consumers.]

What transactions are subject to the requirement?

The federal Risk-Based Pricing Rule applies only to individuals involved in purchasing a vehicle for personal, family or household use. However under California law, the credit score disclosure requirement applies to both purchase and lease transactions.[3] Under these circumstances, the Exception Notice should be given to all potential retail and lease customers looking to acquire a vehicle for personal, family or household use. In the scenario where two consumers are jointly applying for credit, a dealer is required to give each consumer a separate Exception Notice that discloses only that consumer's credit score. California law also requires a dealer to give the notice regarding each credit score obtained and used by the dealer.[4] The credit score disclosure notice requirements under both California and federal law do not apply to any commercial transactions or credit information obtained in connection with pre-screened offers of credit.

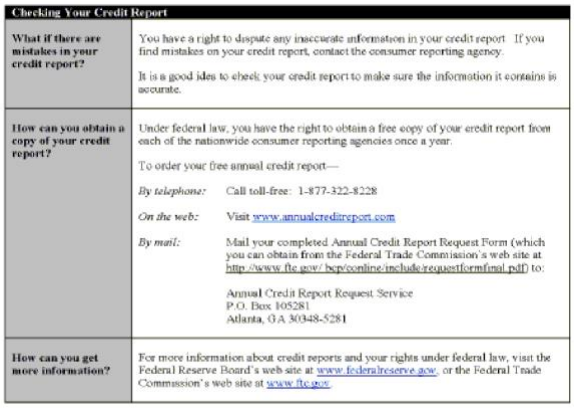
What triggers the notice requirement?

A dealer's obligation to provide the Exception Notice is triggered when two events occur:

- The dealer obtains a credit score from a credit reporting agency, and
- The score is for use in connection with an application for credit for the purchase or lease of a motor vehicle.

[3] Vehicle Code § 11713.20(a)
[4] Vehicle Code § 11713.20(a)(1)

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Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report— *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

When must the notice be given?

To satisfy federal and California legal requirements, a dealer must give the consumer the Exception Notice as soon as is reasonably practicable after a credit score is obtained and certainly before a contract is signed for the purchase or lease of a vehicle.[5] A good approach is for dealership personnel to give the notice to and have it signed by the consumer just prior to asking the consumer to sign the contract or lease. Given that the required content of the Exception Notice consists of information obtained from a credit score vendor, dealers typically obtain completed notices when purchasing the credit score.

Notice required where credit score obtained but no sale or lease results

The best practice regarding compliance with the California credit score disclosure requirement is for dealers to give the notice to consumers whose credit score is obtained even if a vehicle is not purchased or leased. However, the law does not provide a deadline for providing the notice to such consumers. Therefore the notice can be given at any reasonable time. Giving the notice before the consumer leaves the dealership premises will permit the dealer to obtain the consumer's signed acknowledgement of receipt of the notice. Such an acknowledgement, however, is not required.

[5] Vehicle Code § 11713.20(a)

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CHAPTER 24: CONDITIONAL SALE CONTRACTS

This chapter reviews in detail how to complete a conditional sale contract form.

Legal background

Conditional sale contract forms for California dealers are developed to allow compliance with the requirements of the federal Truth in Lending Act (TILA), Regulation Z, the California Automobile Sales Finance Act (ASFA), Song-Beverly, Magnuson-Moss, the FTC Used Car Rule (Buyers Guide), the Vehicle Code, the Insurance Code and a host of other laws and regulations.

With so many laws involved, it is essential that the conditional sale contract be completed correctly. This Chapter provides a step-by-step guide to completing the contract.

Dealers may hear that under federal law, TILA and Regulation Z do not apply to transactions above a certain dollar threshold. However, California law provides that *all* transactions subject to ASFA must comply with the requirements of TILA and Regulation Z regardless of cost.[1]

Contract and disclosure in one

Without a doubt, the goal of most of the laws implicated in the conditional sale contract is to provide consumers with disclosures. That is, instead of seeking to dictate the terms of the contract, the laws seek to require a host of facts and figures to be disclosed in a way the lawmakers felt would be most understandable and prominent.

A lender might ask whether dealership personnel gave a customer "the disclosures." While this can make it sound as if the dealership neglected to supply yet another form or notice, the laws cited above allow "the disclosures" to be included in the conditional sale contract form itself. In effect, the contract form serves two roles – that of a contractual agreement and that of a disclosure document.

Disclosure timing is important. Dealership personnel should review Chapter 40 regarding the requirements for properly providing the customer a copy of the contract for TILA compliance purposes.

ASFA specifically outlaws leaving any blank spaces open on the contract to be filled in later. Ensuring that all blank lines are completely filled in (and inserting "n/a" where appropriate rather than leaving a line blank) will protect the dealership from allegations that this rule has been violated.

Example form

The March 2023 version of the Reynolds and Reynolds LAW® Retail Installment Sale Contract Form LAW553-ARB (LAW RISC) is used as an example in this chapter.

[1] Reg. Z, 12 CFR § 226.1 et seq.; Civil Code § 2982

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Note that the dealer is both the seller and the creditor under the contract. Dealers should remember that even if everyone is aware that the contract will be immediately assigned to a finance source that has pre-approved the transaction, the dealer creates the credit obligation and remains the creditor and contract holder until the contract is assigned. Dealers should also remember that the conditional sale contract is a contract between the dealer (not the finance source) and the buyer. It is not a loan, note, line of credit, or outside financing.

Below are instructions for completing the major sections of the example conditional sale contract.

Buyer identification section

There are spaces for the name, address, cell phone number, and email address for the buyer and any co-buyer, as well as a space for the name and address of the seller.

RETAIL INSTALLMENT SALE CONTRACT – SIMPLE FINANCE CHARGE (WITH ARBITRATION PROVISION)

Buyer Name and Address (Including County and Zip Code)	Co-Buyer Name and Address (Including County and Zip Code)	Seller-Creditor (Name and Address)
Cell: Email:	Cell: Email:	

You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Seller - Creditor (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-In-Lending Disclosures below are part of this contract.

Vehicle identification section

Following the buyer identification section is the vehicle identification section. Here, the vehicle is described and the odometer reading entered. The vehicle is described as either "New" or "Used" (no other terminology is allowed), and the primary use of the vehicle is identified as either personal or business.

New/Used	Year	Make and Model	Odometer	Vehicle Identification Number	Primary Use For Which Purchased
					Personal, family, or household unless otherwise indicated below ☐ business or commercial

It is very important to ensure that each item in this section is accurately completed. Mistakes can result in unintentional but potentially costly violations of law. Dealership personnel should watch for and avoid the following mistakes:

New/Used errors due to misunderstood status. Demos and certain other never-registered vehicles must be sold as "Used" even though they must be reported sold on new vehicle reports of sale. (See the discussion of New/Used vehicle status in Chapter 14.)

New/Used errors due to computer problem. Some systems strike "New" or "Used" based on the DMS system's "new inventory/used inventory" status flag, regardless of other facts regarding the vehicle. As explained in Chapter 14, the legal status of a vehicle is based on its actual history.

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Model name incorrect or incomplete. The description of make and model must accurately reflect the vehicle actually delivered. Otherwise, a buyer could later claim he or she did not receive the product called for by the contract. It is helpful to use the most precise description of the model as is feasible in order to avoid future allegations that a model with different equipment was originally intended. For new vehicles, a precise description of the model can be found on the invoice or MSRP sticker.

Odometer reading omitted or does not match other documents. A mismatch between the odometer reading on the contract and that shown on other documents could lead to allegations of misrepresentation, breach of contract, or at least mistake sufficient to allow the customer to rescind the purchase. Omitting the odometer reading could lead to a claim that the contract was signed with blank spaces to be filled in at a later time – a specific prohibition under ASFA.

Primary use box. Check the business or commercial box if the customer indicates that the primary use of the vehicle will be for business or commercial purposes. Many of the restrictive provisions and harsh remedies under consumer laws against the dealer will not apply. To take advantage of these facts, the checkbox for "business or commercial" use must be checked, otherwise the box will reflect that the vehicle was purchased primarily for personal, family, or household use.

Primary Use For Which Purchased
Personal, family, or household unless otherwise indicated below ☐ business or commercial

Fed Box

TILA and Regulation Z require certain disclosures to be segregated and grouped together in an area informally called the "Fed Box." The Fed Box can be further divided into three areas: the APR and prominent disclosures, the payment schedule, and the informational disclosures. The following is a discussion of these areas.

The APR and other prominent disclosures

Regulation Z requires certain key credit terms to be disclosed more prominently than other credit disclosures. The resulting five box table in the example form is shown as follows.

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost you.	**Amount Financed** The amount of credit provided to you or on your behalf.	**Total of Payments** The amount you will have paid after you have made all payments as scheduled.	**Total Sale Price** The total cost of your purchase on credit, including your down payment of
_____ %	$ _____ (e)	$ _____ (e)	$ _____ (e)	$ _____ is $ _____ (e)

(e) means an estimate

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Correct calculation and printing of these disclosures are essential. Note the following important points:

Deferred downpayment and the Total of Payments box. The total of payments box contains the sum of all payments due under the contract, excluding the downpayment paid at the time of delivery. Any portion of the downpayment paid at a later time is regarded by Regulation Z and ASFA as a deferred downpayment. Deferred downpayments must be included in the Total of Payments box. (See Chapter 27 for a detailed discussion of deferred downpayments.)

Deferred downpayment and the Total Sale Price box. The downpayment to be included in the Total Sale Price box includes the entire downpayment, including any deferred portion.

APR and Finance Charge boxes. Regulation Z requires accuracy in computing the APR, although a *very* slight tolerance for rounding and similar negligible errors is allowed. See the discussion later in this chapter on how backdating a contract can create an error in the APR.

Payment schedule

Regulation Z requires a payment schedule specifying all payments to be made under the contract, excluding the downpayment, but including deferred downpayments. (See the discussion on deferred downpayments in Chapter 27). Note that the example form leaves space for three one-time payments at the inception and for two levels of monthly payments.

Informational disclosures

Regulation Z requires certain informational items to be grouped with the other Fed Box disclosures. Generally, these do not change from deal to deal.

Late Charge. If payment is not received in full within 10 days after it is due, you will pay a late charge of 5% of the part of the payment that is late.
Prepayment. If you pay early, you may be charged a minimum finance charge.
Security Interest. You are giving a security interest in the vehicle being purchased.
Additional Information: See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date, minimum finance charges, and security interest.

Security interest disclosure, limits

The information section reproduced above provides that the buyer is giving a security interest (lien) in the vehicle being purchased. Regulation Z requires this disclosure to be accurate, and ASFA prohibits dealers from taking other forms of collateral or security.

YOUR PAYMENT SCHEDULE WILL BE:

Number of Payments:	Amount of Payments:	When Payments Are Due:
One Payment of	$	
One Payment of	$	
One Payment of	$	
	$	_____ beginning
	$	
One final payment	$	

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Sample itemization of amount financed

The sample form's itemization of amount financed appears below.

ITEMIZATION OF THE AMOUNT FINANCED (Seller may keep part of the amounts paid to others.)

1. Total Cash Price

A. Cash Price of Motor Vehicle and Accessories $ _____ (A)
1. Cash Price Vehicle $ _____
2. Cash Price Accessories $ _____
3. Other (Nontaxable) Describe _____ $ _____
4. Other (Nontaxable) Describe _____ $ _____

B. Document Processing Charge (not a governmental fee) $ _____ (B)

C. Emissions Testing Charge (not a governmental fee) $ _____ (C)

D. (Optional) Theft Deterrent Device(s)
1. (paid to) _____ $ _____ (D1)
2. (paid to) _____ $ _____ (D2)
3. (paid to) _____ $ _____ (D3)

E. (Optional) Surface Protection Product(s)
1. (paid to) _____ $ _____ (E1)
2. (paid to) _____ $ _____ (E2)

F. EV Charging Station (paid to) _____ $ _____ (F)

G. Sales Tax (on taxable items in A through F) $ _____ (G)

H. Electronic Vehicle Registration or Transfer Charge
(not a governmental fee) (paid to) _____ $ _____ (H)

I. (Optional) Service Contract(s)
1. (paid to) _____ $ _____ (I1)
2. (paid to) _____ $ _____ (I2)
3. (paid to) _____ $ _____ (I3)
4. (paid to) _____ $ _____ (I4)
5. (paid to) _____ $ _____ (I5)

J. Prior Credit or Lease Balance (e) paid by Seller to _____ $ _____ (J)
(see downpayment and trade-in calculation)

K. Prior Credit or Lease Balance (e) paid by Seller to _____ $ _____ (K)
(see downpayment and trade-in calculation)

L. (Optional) Debt Cancellation Agreement or Guaranteed Asset Protection Waiver $ _____ (L)

M. (Optional) Used Vehicle Contract Cancellation Option Agreement $ _____ (M)

N. Other paid to _____ For _____ $ _____ (N)

O. Other paid to _____ For _____ $ _____ (O)

Total Cash Price (A through O) $ _____ (1)

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2. Amounts Paid to Public Officials			
A. Vehicle License Fees	$		(A)
B. Registration/Transfer/Titling Fees	$		(B)
C. California Tire Fees	$		(C)
D. Other	$		(D)
Total Official Fees (A through D)	$		(2)
3. Amount Paid to Insurance Companies (Total premiums from Statement of Insurance)	$		(3)
4. ☐ **State Emissions Certification Fee or** ☐ **State Emissions Exemption Fee**	$		(4)
5. Subtotal (1 through 4)	$		(5)
6. Total Downpayment			
A. Total Agreed Value of Property Being Traded-In (see Trade-In Vehicle(s)):	$		(A)
Vehicle 1 $ _____ Vehicle 2 $ _____			
B. Total Less Prior Credit or Lease Balance (e)	$		(B)
Vehicle 1 $ _____ Vehicle 2 $ _____			
C. Total Net Trade-In (A–B)	$		(C)
Vehicle 1 $ _____ Vehicle 2 $ _____			
D. Deferred Downpayment Payable to Seller	$		(D)
E. Manufacturer's Rebate	$		(E)
F. Other	$		(F)
G. Other	$		(G)
H. Other	$		(H)
I. Cash, Cash Equivalent, Check, Credit Card, or Debit Card	$		(I)
Total Downpayment (C through I)	$		(6)
(If negative, enter zero on line 6 and enter the amount less than zero as a positive number on line 1J and/or 1K above)			
7. Amount Financed (5 less 6)	$		(7)

Itemization of amount financed

Virtually every line of the itemization of amount financed is dictated by ASFA. Regulation Z also contributes to the itemization requirements as well. Each line of the example form's itemization section shown on the preceding is reviewed below.

Title Line – "Seller may keep part of the amounts paid to others"

The title of the itemization contains the disclosure that the seller may keep part of the amounts paid to others. This statement is necessary in light of a TILA and Regulation Z requirement to disclose the names of third parties to whom any portion of the amount financed is paid on the consumer's behalf. Once those third parties are named, however, another problem arises: unless every penny of the amount disclosed goes to the third party, court interpretations of TILA and Regulation Z require the seller to disclose that the seller may keep a portion of those amounts. In addition, under California law, stating that the seller may keep a portion of those amounts helps reduce claims of some implied representation that the third party would receive all of those amounts.

DEALER TIP: COMMUNICATIONS REGARDING AMOUNTS PAID TO OTHERS

It is important that dealership personnel avoid saying anything that is inconsistent with the "seller may keep part of amounts paid to others" disclosure. For example, dealership personnel should not say "that amount is going to the vendor" when reviewing the contract with the customer. Instead, a statement such as "this shows our price for the item and the name of the vendor involved in providing it" is preferred.

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The items that are covered by the "seller may keep part of the amounts paid to others" disclosure are the lines that contain a "paid to" space, as well as insurance premiums and government charges. The name of the third party should be disclosed.

Line 1 – Total cash price

The first 'line" of the itemization is a section of disclosures that all add up to "Line 1 – Total Cash Price." Unfortunately, the term "cash price" is used in both Regulation Z and ASFA to refer to different numbers.[2] When discussing the cash price of a vehicle with a customer, it may be more precise for dealership personnel to refer to the line numbers on the itemization, rather than to the terms "cash price" and "total cash price."

Line 1(A) – Cash Price of Motor Vehicle and Accessories. Line 1(A) is a mandatory disclosure under ASFA. It must state the cash price of the vehicle before any of the items in subsections 1(B) through 1(N) are included. That is, line 1(A) may not include any charge for the items in lines 1(B) through 1(N).

However, as long as the total line 1(A) amount remains the same, ASFA allows the line 1(A) cash price to be broken down or subdivided into components that may be shown on the contract.[3] The example form takes advantage of this flexibility by including lines for the cash prices of the vehicle [1(A)(1)], accessories [1(A)(2)], and "Other (Nontaxable)" [1(A)(3) and (4)]. These additional subdivisions for "Other," while permitted, are not required.

ITEMIZATION OF THE AMOUNT FINANCED (Seller may keep part of the amounts paid to others.)

1. Total Cash Price

A. Cash Price of Motor Vehicle and Accessories $ _____ (A)

1. Cash Price Vehicle $ _____

2. Cash Price Accessories $ _____

3. Other (Nontaxable) Describe _____ $ _____

4. Other (Nontaxable) Describe _____ $ _____

Line 1(A)(2) – Cash Price Accessories. Wheel rims, radios, running boards, truck bed liners, and other accessories that are or will be physically attached to the vehicle and which were included as part of the final cash selling price arrived at during negotiations are not required by law to be separately disclosed. In other words, the cost of these items may be included on line 1(A)(1), without being separately itemized on line 1(A)(2). However, there itemizing the accessories on the lines provided can be beneficial. For example, dealers are legally required to sell vehicles at their advertised prices;[4] disclosing the advertised price on line 1(A)(1) and disclosing the price for added accessories on line 1(A)(2) strong evidence that the dealer sold the vehicle at the advertised price. Some finance sources may require accessories to be separately itemized. If line 1(A)(2) is used, the

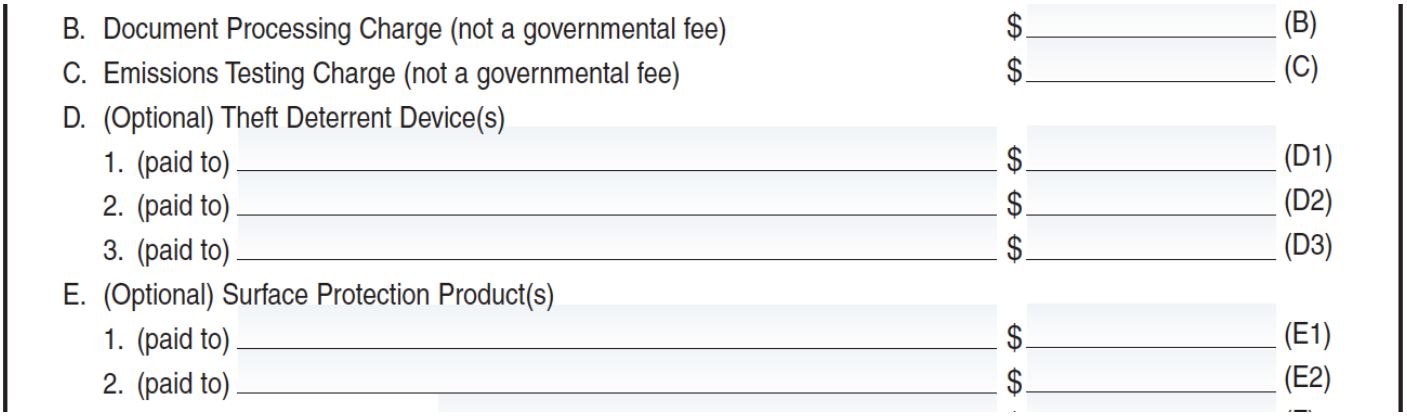
[2] Reg. Z, 12 CFR § 226.2(a)(9); Civil Code § 2981(e)
[3] Civil Code § 2982
[4] Vehicle Code § 11713.1(e)

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amount shown should also be disclosed on the cash price accessories line in the Other Goods, Services and Miscellaneous Charges section of the Reynolds and Reynolds Pre-Contract Disclosure Form (Form LAWCA-PCD).

Lines 1(A)(3), 1(A)(4) – Other (Nontaxable). Lines 1(A)(3) and 1(A)(4) are available for nontaxable items sold with and related to the vehicle or its accessories, such as certain dealer services. However, since this disclosure is not provided for by ASFA, and taxability determinations are often unintuitive in vehicle sales, it is risky for a dealer to use lines marked "other" without careful consideration. Accordingly, dealers should only disclose goods or services on line (1)(A)(3) and 1(A)(4) when approved by competent legal counsel in advance. If these lines are used, the amount(s) shown should also be disclosed on the line(s) provided for that purpose in the Other Goods, Services and Miscellaneous Charges section of the Reynolds and Reynolds Pre-Contract Disclosure Form (Form LAWCA-PCD).

Line 1(B) – Document Processing Charge. A dealer enrolled in the DMV Business Partner Automation Program (BPA Program) is authorized to charge a "document processing charge" of up to $85.[5] The document processing charge may not be represented as a governmental fee. Unlike non-franchised dealers, franchised new vehicle dealers must enroll in the BPA Program and are required to register electronically through the BPA Program all vehicles they sell.[6] The $85 charge should also be disclosed on the line provided for that purpose in the Other Goods, Services and Miscellaneous Charges section of the Reynolds and Reynolds Pre-Contract Disclosure Form (Form LAWCA-PCD).


B. Document Processing Charge (not a governmental fee) $ _____ (B)
C. Emissions Testing Charge (not a governmental fee) $ _____ (C)
D. (Optional) Theft Deterrent Device(s)
1. (paid to) _____ $ _____ (D1)
2. (paid to) _____ $ _____ (D2)
3. (paid to) _____ $ _____ (D3)
E. (Optional) Surface Protection Product(s)
1. (paid to) _____ $ _____ (E1)
2. (paid to) _____ $ _____ (E2)

Line 1(C) – Emissions Testing Charge. Before including a charge on this line, be sure a smog inspection is actually required by law for the vehicle being sold, and that the vehicle is not subject to one of several exemptions. $50 is the maximum smog check labor fee that can be passed on to the buyer.[7] If assessed, the emissions testing charge must be disclosed on line 1(C), and should also be disclosed on the line provided for that purpose in the Other Goods, Services and Miscellaneous Charges section of the Reynolds and Reynolds Pre-Contract Disclosure Form (Form LAWCA-PCD).

[5] Vehicle Code § 1685; Vehicle Code § 4456.5(a)(1)(A)
[6] Vehicle Code § 4456.4
[7] Vehicle Code § 11713.1(e)

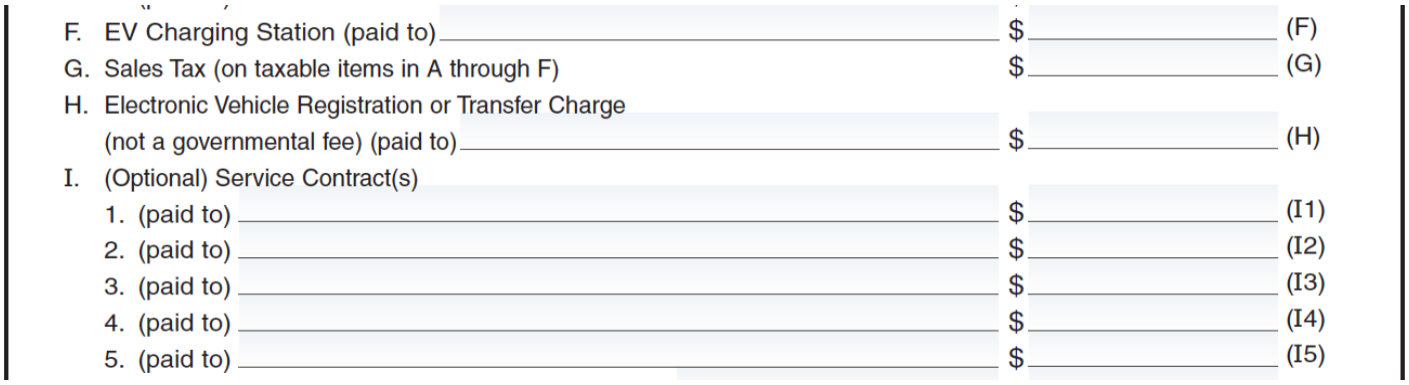
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Lines 1(D) – Theft Deterrent Devices. Enter the charge for each theft deterrent device separately in lines 1(D)1, 1(D)2, and 1(D)3. (See Chapter 22 for the definition of a theft deterrent device.) Ensure that the price and description of each theft deterrent device matches that shown in the Optional Goods and Services section of the Reynolds and Reynolds Pre-Contract Disclosure Form (Form LAWCA-PCD).

Lines 1(E) – Surface Protection Products. Enter the charge for each surface protection product separately in lines 1(E)1 and 1(E)2. (See Chapter 22 for the definition of a surface protection product.) Ensure that the price and description of each surface protection product matches that shown in the Optional Goods and Services section of the Reynolds and Reynolds Pre-Contract Disclosure Form (Form LAWCA-PCD).

DEALER TIP: "PAID TO" DESIGNATION
Dealership personnel should not automatically insert a theft deterrent device, surface protection product, or EV charging station manufacturer in the "paid to" line. Mark the line "n/a" when the vendor is not providing a service for the specific benefit of the purchaser. Paying a vendor the wholesale cost for alarm hardware, for example, is not a payment for the benefit of the purchaser. Instead, insert the vendor's name only if there is a specific benefit to the customer such as if the theft deterrent system includes a customer subscription or an etch product includes registration and ongoing access to the etched number for vehicle recovery purposes.

Line 1(F) – EV Charging Station. Enter the charge for any EV charging station. Ensure that the price matches that shown in the Optional Goods and Services section of the Reynolds and Reynolds Pre-Contract Disclosure Form (Form LAWCA-PCD).


F. EV Charging Station (paid to) _____ $ _____ (F)
G. Sales Tax (on taxable items in A through F) $ _____ (G)
H. Electronic Vehicle Registration or Transfer Charge
(not a governmental fee) (paid to) _____ $ _____ (H)
I. (Optional) Service Contract(s)
1. (paid to) _____ $ _____ (I1)
2. (paid to) _____ $ _____ (I2)
3. (paid to) _____ $ _____ (I3)
4. (paid to) _____ $ _____ (I4)
5. (paid to) _____ $ _____ (I5)

Line 1(G) – Sales Tax (on taxable items in A through F). Line 1(G) lists the sales tax owing on the transaction.

Line 1(H) – Electronic Vehicle Registration or Transfer Charge Dealers are authorized to "pass through" the actual amount charged by a first line service provider for providing license plate processing, postage, and the fees and services authorized under the Business Partner Automation Program.[8] Dealers, however, are not authorized to charge customers for internal dealer costs, charges from registration services, or amounts charged

[8] Vehicle Code § 4456.5(a)(2)

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by a first line service provider for additional goods or services. This charge may not be represented as a governmental fee and the example form specifically discloses this fact to the consumer. This charge should also be disclosed on the line provided for that purpose in the Other Goods, Services and Miscellaneous Charges section of the Reynolds and Reynolds Pre-Contract Disclosure Form (Form LAWCA-PCD).

DEALER TIP: COLLECTION OF CHARGE

Dealers may not collect any Electronic Vehicle Registration or Transfer Charge for transactions that may not be processed electronically through the BPA Program.

Dealers who "outsource" electronic registration to a registration service may not collect any Electronic Vehicle Registration or Transfer Charge.

Lines 1(I) – Optional Service Contracts. Lines 1(I1)(I2)(I3)(I4), and (I5) provide space to list the charges for five service contracts. If any charge is included on any of these lines, the box entitled Optional Service Contract(s) must also be completed and signed. The price and description of each service contract must match the amount listed in the Optional Goods and Services section of the Reynolds and Reynolds Pre-Contract Disclosure Form (Form LAWCA-PCD) for that charge. The "paid to" lines must be completed by including the name of the service contract obligor to whom sums were paid on the consumer's behalf. In the rare case when a dealer is the obligated party ("dealer obligor") on a service contract, the "paid to" line should be marked "n/a".

OPTIONAL SERVICE CONTRACT(S) You want to purchase the service contract(s) written with the following company(ies) for the term(s) shown below for the charge(s) shown in item 1I.

I1 Company _____
Term _____ Mos. or _____ Miles
I2 Company _____
Term _____ Mos. or _____ Miles
I3 Company _____
Term _____ Mos. or _____ Miles
I4 Company _____
Term _____ Mos. or _____ Miles
I5 Company _____
Term _____ Mos. or _____ Miles
Buyer X _____

Lines 1(J) and 1(K) – Prior Credit or Lease Balance paid by Seller. ASFA specifies exactly how negative equity financed in the contract must be disclosed. (See Chapter 28 for a detailed description of these disclosure requirements.) The March 2023 revision of the LAW553-ARB form adds a second line [1(K)] for prior credit or lease balance paid by seller, to be used when there are two trade-in vehicles.

Line 1(J) must show any amount of negative equity remaining following application of all credits disclosed in the trade-in and downpayment section of the contract and disclose the name of the lienholder or lessor being paid-off. Alternative ways of disclosing negative equity – including overallowances combined with an increased vehicle cash price – must be avoided. The prior credit or lease balance shown should also be disclosed on the line provided for that purpose in the Other Goods, Services and Miscellaneous Charges section of the Reynolds and Reynolds Pre-Contract Disclosure Form (Form LAWCA-PCD).

Line 1(K) should only be utilized if there are two trade-in vehicles, and must follow the same guidelines as those set forth above for line 1(J).

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J. Prior Credit or Lease Balance (e) paid by Seller to _____ $_____ (J)
(see downpayment and trade-in calculation)
K. Prior Credit or Lease Balance (e) paid by Seller to _____ $_____ (K)
(see downpayment and trade-in calculation)

OPTIONAL DEBT CANCELLATION AGREEMENT OR GUARANTEED ASSET PROTECTION WAIVER. A debt cancellation agreement or guaranteed asset protection waiver (GAP waiver) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. If you choose to buy debt cancellation or a GAP waiver, the charge is shown in item 1L of the Itemization of Amount Financed. See your agreement for details on the terms and conditions it provides. It is a part of this contract.

Term _____ Mos. _____
Name of Agreement

I want to buy a debt cancellation agreement or GAP waiver.

Buyer Signs X _____

Line 1(L) – Optional Debt Cancellation Agreement or Guaranteed Asset Protection Waiver. Line 1(L) provides space to disclose the charge for any Debt Cancellation Agreement or Guaranteed Asset Protection Waiver, often referred to as a GAP contract. If a charge is included on this line, the box entitled Optional Debt Cancellation Agreement or Guaranteed Asset Protection Waiver must also be completed and signed. The price and description of the agreement must match that shown in the Optional Goods and Services section of the Reynolds and Reynolds Pre-Contract Disclosure Form (Form LAWCA-PCD).

As described in Chapter 19, dealers almost exclusively offer so-called GAP contracts as debt cancellation agreements and not as insurance. Such an agreement is not a contract with vendors or administrators to pay the "gap" amount, but instead is an agreement by *the seller and the holder of the contract* to waive the "gap" liability.

L. (Optional) Debt Cancellation Agreement or Guaranteed Asset Protection Waiver $_____ (L)
M. (Optional) Used Vehicle Contract Cancellation Option Agreement $_____ (M)

Line 1(M) – Used Vehicle Contract Cancellation Option Agreement. Line 1(M) provides space to disclose the amount charged for a used vehicle contract cancellation option. (See Chapter 29, Used Vehicle Contract Cancellation Option Agreement.) The price and description of the used vehicle cancellation option must match that shown in the Optional Goods and Services section of the Reynolds and Reynolds Pre-Contract Disclosure Form (Form LAWCA-PCD).

Lines 1(N) and 1(O) – Other. Lines 1(N) and 1(O) are available in the event other items of the kind previously disclosed are sold. However, because ASFA does not provide for a general category of "other," it is very important that these lines be used only for items approved in advance for placement on these lines by competent counsel. If an "Other" line is used, the amount shown should also be disclosed on the line provided for that purpose in the Other Goods, Services and Miscellaneous Charges section of the Reynolds and Reynolds Pre-Contract Disclosure Form (Form LAWCA-PCD).

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N. Other paid to _____ For _____ $_____ (N)
O. Other paid to _____ For _____ $_____ (O)
Total Cash Price (A through O) $_____ (1)

Line 1 – Total Cash Price (A through O). The total to be shown on the "Total Cash Price" line below Line (O) is required by ASFA.

Line 2 – Amounts Paid to Public Officials

2. Amounts Paid to Public Officials
A. Vehicle License Fees $_____ (A)
B. Registration/Transfer/Titling Fees $_____ (B)
C. California Tire Fees $_____ (C)
D. Other _____ $_____ (D)
Total Official Fees (A through D) $_____ (2)

The second "line" of the itemization section is the total of several lines that disclose "amounts paid to public officials." Amounts paid for Vehicle License Fees, Registration/Transfer/Titling Fees, and California Tire Fees are included here in the separate lines provided for each. Line 2(A) should include only the vehicle license fees for the vehicle. Line 2(B) should include the sum of all applicable registration, transfer, and titling fees for the vehicle. Prior to a change in California law applicable to conditional sale contracts entered into after January 1, 2012, many dealers faced class action "fee lumping" lawsuits alleging an ASFA disclosure violation for combining vehicle license fees with registration, transfer, and titling fees on a single line, and inserting "n/a" or "$0" on the other line.[9]

Line 2(C) – California Tire Fee. The tire fee is $1.75 per tire.[10] For four-wheel vehicles with a spare, the total is $8.75. The tire fee applies to new tires only, so used vehicles sold with used tires do not incur a fee, although selling a used vehicle with new tires installed would require collection of the fee for each new tire. With demonstrators, the Board of Equalization (now restructured as part of the California Department of Tax and Fee Administration) has taken the legal position that dealers must self-report and remit the tire fee for at least the four tires on the ground when the vehicle is placed into demonstration use.[11] The dealer may then collect the tire fee for any spare tire when the vehicle is sold at retail.

DEALER TIP: ACCURATELY CALCULATE TIRE FEE
Dealership personnel should take care to charge the tire fee only as to new tires actually delivered.

WARNING: Many new vehicles do not have a spare tire and so care should be taken to accurately calculate the tire fee.

[9] Civil Code §§ 2983.1(f), 2983(b)
[10] Public Resources Code § 42885
[11] Board of Equalization Revised Legal Opinion Letter dated August 22, 2007

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Line 3 – Amount Paid to Insurance Companies

3. Amount Paid to Insurance Companies (Total premiums from Statement of Insurance)	$ _____	(3)

Line 3 is for the aggregate amount of insurance premiums included in the contract. Each insurance agreement should be separately itemized in the Statement of Insurance section of the contract.

Line 4 – State Emissions Certification Fee or State Emissions Exemption Fee

4. ☐ State Emissions Certification Fee or ☐ State Emissions Exemption Fee	$ _____	(4)

Line 4 is for the smog certificate or exemption/waiver fee (transfer fee) to be paid to the state. Unless powered by diesel, vehicles no older than four model years qualify for a smog transfer exemption and the fee is $8.00.[12] The dealer smog labor fee should not be charged when the transfer exemption is available. Where vehicles must be smog checked, the same line is used, but the certification box is checked and the $8.25 cost of the certificate paid to the state is inserted.[13]

Line 5 – Subtotal of All Charges

Line 5 totals all amounts disclosed on Lines 1 through 4.

5. Subtotal (1 through 4)	$ _____	(5)

Line 6 – Downpayment

Line 6 is another key section of the form and is used to calculate the net downpayment and any negative equity. The example contract includes space to document two trade-in vehicles.

6. Total Downpayment

A. Total Agreed Value of Property Being Traded-In (see Trade-In Vehicle(s)):	$ _____	(A)
Vehicle 1 $ _____ Vehicle 2 $ _____		
B. Total Less Prior Credit or Lease Balance (e)	$ _____	(B)
Vehicle 1 $ _____ Vehicle 2 $ _____		
C. Total Net Trade-In (A–B)	$ _____	(C)
Vehicle 1 $ _____ Vehicle 2 $ _____		

Line 6(A) – Total Agreed Value of Property Being Traded-IN. Line 6(A) shows the "agreed value" of one or two trade-in vehicles. Space exists in a separate box titled "Trade-In Vehicle(s)" to provide details regarding

[12] Vehicle Code § 4000.1(d)(7)
[13] 16 CCR § 3340.35.1

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each trade-in vehicle. Dealers should not assume that the term "agreed value" means that any convenient number that is acceptable to the buyer is permitted. At the very least, the number must have some good faith relation to the value of the trade-in to the dealer. (See Chapter 11 for a discussion of trade-in vehicle issues.)

Line 6(B) – Total Less Prior Credit or Lease Balance (e). Line 6(B) should reflect the total prior credit or lease balances on each of the trade-ins. Note that the buyer signs a "Trade-In Payoff Agreement" contained in a box on the front of the contract below the itemization that commits the buyer to pay the difference if the stated payoff amount is less than the actual payoff amount on the trade-in vehicle. As a result, separate payoff adjustment and similar forms that could violate the single document rule and are unnecessary. (See Chapter 28 for a complete discussion of proper negative equity disclosures.)

Line 6(C) – Total Net Trade-In (A less B) (indicate if a negative number). Line 6(C) is required by ASFA to show the net equity – positive or negative – in the trade-in(s).[14]

Line 6(D) – Deferred Downpayment. Line 6(D) is to contain the total amount of any portion of the downpayment to be deferred. The due date for the deferred payments cannot be any later than the due date of the second regularly scheduled installment.[15] Moreover, no finance charge can be imposed on the deferred amount.[16] (See Chapter 27 for a complete discussion of deferred downpayments.)

Line 6(E) – Manufacturer's Rebate. Line 6(E) lists amounts attributable to a manufacturer's rebate.

Lines 6(F), 6(G), and 6(H) – Other. Lines 6(F)-6(H) provide space for other types of consideration to be received as a downpayment, such as a second manufacturer's rebate or government vehicle purchase incentive vouchers, including EV incentives. The use of electric vehicle/zero emission vehicle incentives is discussed in Chapter 20: Clean Vehicle Incentives/CAV Decals.

Line 6(I) – Cash, Cash Equivalent, Check, Credit Card, or Debit Card. Line 6(I) is to list the downpayment received at the time of delivery. Although retail dealer agreements with some finance sources may not allow their use, nothing in the law prohibits dealers from accepting payment by credit card for all or any portion of the downpayment, and disclosing such an amount on this line.

D. Deferred Downpayment Payable to Seller	$	(D)
E. Manufacturer's Rebate	$	(E)
F. Other _____	$	(F)
G. Other _____	$	(G)
H. Other _____	$	(H)
I. Cash, Cash Equivalent, Check, Credit Card, or Debit Card	$	(I)
Total Downpayment (C through I)	$	(6)
(If negative, enter zero on line 6 and enter the amount less than zero as a positive number on line 1J and/or 1K above)		
7. Amount Financed (5 less 6)	$	(7)

[14] Civil Code § 2982(a)(6)(C)
[15] Civil Code § 2982(a)(6)(D)
[16] Civil Code § 2982(a)(6)(D)

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Line 6 – Total Downpayment (C through I). Line 6 lists the total downpayment, either as a positive number, or in situations where the prior credit or lease balance on a trade-in vehicle exceeds the combined amount of all other forms of downpayment, a zero. In such negative equity situations, the difference must be included as a positive number on line 1(J) [and line 1(K) if applicable], showing the "Prior Credit or Lease Balance Paid by Seller to _____." A negative number should never be disclosed on this line.

Line 7 – Amount Financed

The amount financed is the difference between Section 5 and Section 6. That amount appears on line 7, as well as in the Fed Box as described above.

STATEMENT OF INSURANCE

NOTICE. No person is required as a condition of financing the purchase of a motor vehicle to purchase or negotiate any insurance through a particular insurance company, agent or broker. You are not required to buy any other insurance to obtain credit. Your decision to buy or not buy other insurance will not be a factor in the credit approval process.

Vehicle Insurance

		Term	Premium
$ _____	Ded. Comp., Fire & Theft	____ Mos.	$ _____
$ _____	Ded. Collision	____ Mos.	$ _____
Bodily Injury $ _____	Limits	____ Mos.	$ _____
Property Damage $ _____	Limits	____ Mos.	$ _____
Medical _____		____ Mos.	$ _____
_____		____ Mos.	$ _____
Total Vehicle Insurance Premiums			$ _____

UNLESS A CHARGE IS INCLUDED IN THIS AGREEMENT FOR PUBLIC LIABILITY OR PROPERTY DAMAGE INSURANCE, PAYMENT FOR SUCH COVERAGE IS NOT PROVIDED BY THIS AGREEMENT.

You may buy the physical damage insurance this contract requires (see back) from anyone you choose who is acceptable to us. You may also provide the physical damage insurance through an existing policy owned or controlled by you that is acceptable to us. You are not required to buy any other insurance to obtain credit.

Buyer X _____

Co-Buyer X _____

Seller X _____

Statement of Insurance

The statement of insurance section of the contract which follows contains spaces to make disclosures required by Regulation Z, ASFA, the Insurance Code and Insurance Commissioner Regulations when selling various types of insurance. Unless insurance is being sold, all lines containing potential policy substance should be filled in with "n/a." The first signature lines of the statement of insurance section should be signed by all parties—even if insurance is not sold. When insurance *is* sold, this section must be accurately completed and dealers must avoid any statement inconsistent with any of the notices, legends, and warnings contained in the statement of insurance.

Trade-In Vehicle(s)

The example contract contains a section to document up to two trade-in vehicles. The (c) lines allow dealers to document retained equity of the buyer. Dealers should proceed with caution to ensure that the retained equity section is never used to create negative equity. (See Chapter 11: Trade-In Issues for more information.)

Trade-In Vehicle(s)

1. Vehicle 1
Year _____ Make _____
Model _____ Odometer _____
VIN _____
a. Agreed Value of Property $ _____
b. Buyer/Co-Buyer Retained Trade Equity $ _____
c. Agreed Value of Property Being Traded-In (a–b) $ _____
d. Prior Credit or Lease Balance $ _____
e. Net Trade-In (c–d) (must be ≥ 0 for buyer/co-buyer to retain equity) $ _____

2. Vehicle 2
Year _____ Make _____
Model _____ Odometer _____
VIN _____
a. Agreed Value of Property $ _____
b. Buyer/Co-Buyer Retained Trade Equity $ _____
c. Agreed Value of Property Being Traded-In (a–b) $ _____
d. Prior Credit or Lease Balance $ _____
e. Net Trade-In (c–d) (must be ≥ 0 for buyer/co-buyer to retain equity) $ _____

Total Agreed Value of Property Being Traded-In (1c+2c) $ _____ *
Total Prior Credit or Lease Balance (1d+2d) $ _____ *
Total Net Trade-In (1e+2e) $ _____ *
(*See item 6A–6C in the Itemization of Amount Financed)

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Public Liability Warning

The contract also contains other insurance warnings required by law, including the following text (printed in red in the contract), regarding public liability and collision insurance that must be signed by the buyer.[17]

THE MINIMUM PUBLIC LIABILITY INSURANCE LIMITS PROVIDED IN LAW MUST BE MET BY EVERY PERSON WHO PURCHASES A VEHICLE. IF YOU ARE UNSURE WHETHER OR NOT YOUR CURRENT INSURANCE POLICY WILL COVER YOUR NEWLY ACQUIRED VEHICLE IN THE EVENT OF AN ACCIDENT, YOU SHOULD CONTACT YOUR INSURANCE AGENT.
WARNING:
YOUR PRESENT POLICY MAY NOT COVER COLLISION DAMAGE OR MAY NOT PROVIDE FOR FULL REPLACEMENT COSTS FOR THE VEHICLE BEING PURCHASED. IF YOU DO NOT HAVE FULL COVERAGE, SUPPLEMENTAL COVERAGE FOR COLLISION DAMAGE MAY BE AVAILABLE TO YOU THROUGH YOUR INSURANCE AGENT OR THROUGH THE SELLING DEALER. HOWEVER, UNLESS OTHERWISE SPECIFIED, THE COVERAGE YOU OBTAIN THROUGH THE DEALER PROTECTS ONLY THE DEALER, USUALLY UP TO THE AMOUNT OF THE UNPAID BALANCE REMAINING AFTER THE VEHICLE HAS BEEN REPOSSESSED AND SOLD.
FOR ADVICE ON FULL COVERAGE THAT WILL PROTECT YOU IN THE EVENT OF LOSS OR DAMAGE TO YOUR VEHICLE, YOU SHOULD CONTACT YOUR INSURANCE AGENT.
THE BUYER SHALL SIGN TO ACKNOWLEDGE THAT HE/SHE UNDERSTANDS THESE PUBLIC LIABILITY TERMS AND CONDITIONS.

S/S X _____ X _____

Additional and Separate insurance warning sometimes required

In the rare instance when a dealer furnishes physical damage insurance to the buyer that does not also provide public liability coverage, California law requires the dealer to give the buyer a special notice.[18] This notice includes statutory language indicating that only physical damage coverage is being purchased. The notice must be signed by the buyer and a copy given to the buyer. If applicable, a dealer should provide the notice whether or not the customer finances or even pays for the cost of the coverage.

Autobroker fee disclosure box

California law requires dealers to disclose on the contract whether the transaction is subject to a fee received by an autobroker from the selling new motor vehicle dealer and to identify the autobroker if applicable.[19] If a dealer is paying an autobroker a fee for brokering the transaction, regardless of whether the autobroker calls the payment a fee, the dealer should check the applicable box and disclose the name of the autobroker.

AUTO BROKER FEE DISCLOSURE
If this contract reflects the retail sale of a new motor vehicle, the sale is not subject to a fee received by an autobroker from us unless the following box is checked:
☐ **Name of autobroker receiving fee, if applicable:** _____

Seller's right to cancel box

The contract provides a box to secure a separate customer signature agreeing to the dealer's right to rescind (cancel) the contract if the dealer cannot assign the conditional sale contract to a financial institution. The importance of obtaining the customer's signature in this box cannot be overstated. (See Chapter 45 for a thorough discussion of this contractual right.)

SELLER'S RIGHT TO CANCEL If Buyer and Co-Buyer sign here, the provisions of the Seller's Right to Cancel section on the back giving the Seller the right to cancel if Seller is unable to assign this contract to a financial institution will apply.
Buyer X _____ **Co-Buyer X** _____

One-pay option box

A box in the contract allows a dealer to give the buyer the option of paying the entire contract balance within a set period of time without incurring any finance charges. Often, this option to pay off the contract quickly is

[17] Civil Code § 2984.1
[18] Vehicle Code § 5604.5
[19] Vehicle Code § 11713.1(x)

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actually the original goal of the customer, with the scheduled monthly payments under the contract being the customer's "fall back" position. Many dealers find this approach superior to writing up a simple one-pay contract because it provides backup financing and additional contractual protections in the event that the customer is unable to secure outside financing or the cash to complete the one-pay arrangement.

OPTION: ☐ You pay no finance charge if the Amount Financed, item 7, is paid in full on or before _____, Year _____. SELLER'S INITIALS _____

Agreement to Arbitrate

The example contract provides a box to secure a separate customer signature agreeing that disputes may be resolved by binding arbitration to be conducted pursuant to the arbitration provision on the reverse side of the contract. The customer's signature in this box must be obtained for a dealer to have the important right to arbitrate a dispute. (See Chapter 48 for a discussion of arbitration provisions.)

Agreement to Arbitrate: By signing below, you agree that, pursuant to the Arbitration Provision on the reverse side of this contract, you or we may elect to resolve any dispute by neutral, binding arbitration and not by a court action. See the Arbitration Provision for additional information concerning the agreement to arbitrate.

Buyer Signs X _____

Co-Buyer Signs X _____

How this contract can be changed (no oral change) box

California law provides that unless a specific statement to the contrary is signed, transactions between certain merchants and non-merchants may be modified by oral agreement.[20] The contract contains a box to secure the buyer's signature agreeing that only written modifications will be enforced.

HOW THIS CONTRACT CAN BE CHANGED. This contract contains the entire agreement between you and us relating to this contract. Any change to the contract must be in writing and both you and we must sign it. No oral changes are binding.

Buyer Signs X _____ **Co-Buyer Signs X** _____

Payoff agreement regarding trade-in

DEALER TIP: REGARDING SEPARATE TRADE-IN PAYOFF FORMS
Dealership personnel should avoid using separate trade-in payoff forms.

Some dealers have felt compelled to have buyers execute separate "trade-in payoff adjustment" documents requiring the buyer to reimburse the dealer for additional amounts paid to the lienholder if the trade-in payoff quote provided in the contract is too low. Such agreements trigger single document rule concerns and are unnecessary since standard conditional sale contract forms (including the example contract) include a Payoff Agreement in a box to be separately signed by the buyer. (See Chapter 26 for a discussion of the single document rule.) This box was updated in 2023 to require the customer to sign or provide any documents reasonably required to effect the transfer of the trade-in vehicle to the dealer. If the customer fails or refuses

[20] Commercial Code § 2209

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to do so, then this may provide a basis for the dealer to rescind the contract. Consult with competent counsel before doing so, however.

Trade-In Payoff Agreement: Seller relied on information from you and/or the lienholder or lessor of your trade-in vehicle(s) to arrive at the payoff amount shown as the Prior Credit or Lease Balance in Trade-In Vehicle(s). You understand that the amount quoted is an estimate. Seller agrees to pay the payoff amount shown as the Prior Credit or Lease Balance in Trade-In Vehicle(s) to the lienholder or lessor of the trade-in vehicle(s), or its designee. If the actual payoff amount is more than the amount shown as the Prior Credit or Lease Balance in Trade-In Vehicle(s), you must pay the Seller the excess on demand. If the actual payoff amount is less than the amount shown as the Prior Credit or Lease Balance in Trade-In Vehicle(s), Seller will refund to you any overage Seller receives from your prior lienholder or lessor. Except as stated in the "NOTICE" on the back of this contract, any assignee of this contract will not be obligated to pay the Prior Credit or Lease Balance shown in Trade-In Vehicle(s) or any refund. You agree to sign or provide any documents Seller reasonably requires to effect the transfer of the Trade-In Vehicle to Seller or its designee.

Buyer Signature X _____ **Co-Buyer Signature X** _____

Notices and signature lines

Above the final signature lines, a number of boxes are included in the contract to supply notices and gather signatures required by the ASFA.[21] Dealership personnel should be sure to obtain the buyer and any co-buyer signatures in the "unfair practices" box (the box that commences "[i]f you have a complaint…"). The buyer and any co-buyer signatures should also be obtained on the contract signature line below the "there is no cooling off period…" notice section.

Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement.

If you have a complaint concerning this sale, you should try to resolve it with the seller.
Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or an investigator for the Department of Motor Vehicles, or any combination thereof.
After this contract is signed, the seller may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the seller to make a unilateral change.

Buyer Signature X _____ **Co-Buyer Signature X** _____

The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.

THERE IS NO COOLING-OFF PERIOD UNLESS YOU OBTAIN A CONTRACT CANCELLATION OPTION
California law does not provide for a "cooling-off" or other cancellation period for vehicle sales. Therefore, you cannot later cancel this contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign below, you may only cancel this contract with the agreement of the seller or for legal cause, such as fraud. However, California law does require a seller to offer a two-day contract cancellation option on used vehicles with a purchase price of less than forty thousand dollars ($40,000), subject to certain statutory conditions. This contract cancellation option requirement does not apply to the sale of a recreational vehicle, a motorcycle, or an off-highway motor vehicle subject to identification under California law. See the vehicle contract cancellation option agreement for details.

YOU AGREE TO THE TERMS OF THIS CONTRACT. YOU CONFIRM THAT BEFORE YOU SIGNED THIS CONTRACT, WE GAVE IT TO YOU, AND YOU WERE FREE TO TAKE IT AND REVIEW IT. YOU ACKNOWLEDGE THAT YOU HAVE READ BOTH SIDES OF THIS CONTRACT, INCLUDING THE ARBITRATION PROVISION ON THE REVERSE SIDE, BEFORE SIGNING BELOW. YOU CONFIRM THAT YOU RECEIVED A COMPLETELY FILLED-IN COPY WHEN YOU SIGNED IT.

Buyer Signature X _____ Date _____ **Co-Buyer Signature X** _____ Date _____
Buyer Printed Name _____ Co-Buyer Printed Name _____
If the "business" use box is checked in "Primary Use for Which Purchased": Print Name _____ Title _____
Co-Buyers and Other Owners — A co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the security interest in the vehicle given to us in this contract.
Other Owner Signature X _____ Address _____

Seller's signature

Seller Signs _____ Date _____ **By X** _____ Title _____

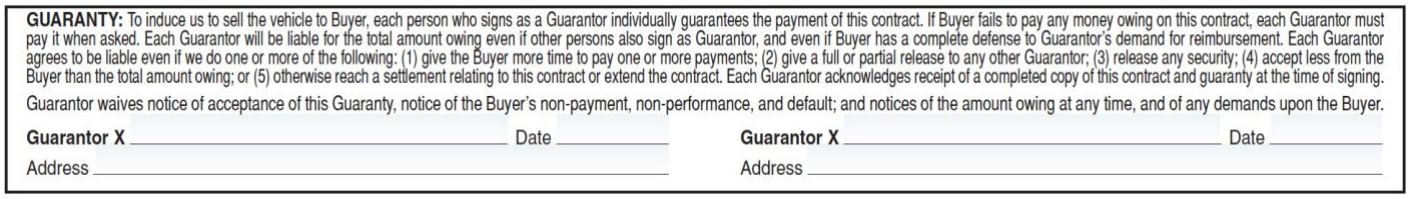
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[21] Civil Code § 2982(g), (h), and (r)

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Guaranty Box

The seller's signature appears after a box entitled "Guaranty." Because certain waivers in the guaranty box may be inconsistent with provisions of ASFA, it is recommended that the guaranty box be used only in transactions that are purely business and commercial in nature.



GUARANTY: To induce us to sell the vehicle to Buyer, each person who signs as a Guarantor individually guarantees the payment of this contract. If Buyer fails to pay any money owing on this contract, each Guarantor must pay it when asked. Each Guarantor will be liable for the total amount owing even if other persons also sign as Guarantor, and even if Buyer has a complete defense to Guarantor's demand for reimbursement. Each Guarantor agrees to be liable even if we do one or more of the following: (1) give the Buyer more time to pay one or more payments; (2) give a full or partial release to any other Guarantor; (3) release any security; (4) accept less from the Buyer than the total amount owing; or (5) otherwise reach a settlement relating to this contract or extend the contract. Each Guarantor acknowledges receipt of a completed copy of this contract and guaranty at the time of signing.

Guarantor waives notice of acceptance of this Guaranty, notice of the Buyer's non-payment, non-performance, and default; and notices of the amount owing at any time, and of any demands upon the Buyer.

Guarantor X _____ Date _____ **Guarantor X** _____ Date _____

Address _____ Address _____

Blank Box

DEALER TIP: CAUTION REGARDING BLANK BOX

Dealership personnel should proceed with extreme caution in using the blank box. It should only be used in ways that have been previously approved by lenders and legal counsel as being compliant with California and federal law.

The example contract includes a blank box to allow dealers to properly incorporate any additional terms or agreements made with the customer. Because California law requires that all agreements impacting the total cost and terms of payment regarding a vehicle purchase must be in a "single document," the blank box can be used to reference or describe any additional terms or side agreements so that they are included within the single conditional sale contract.[22] Dealers should be aware that the contract is already designed to correctly document the majority of sales transactions, and so the blank box should not be used for the majority of transactions. When the blank box is not used, language should be inserted to indicate there are no other terms. Sample phrases include "This box is left intentionally blank" and "No additional terms to be entered in this box."

Other important contract provisions

The back of most contract forms, including the example form, contains many of the operative terms of the agreement. A few of the more important sections are discussed below.

Section 2(d) – Required insurance

Section 2(d) of the example contract requires the buyer to keep the vehicle insured against loss or damage during the term of the contract and cover the contract holder's interest in the vehicle. This section also permits the contract holder to secure insurance and charge the customer for it if the customer fails to comply with this requirement.

Section 3(c) – Bad check charge

Section 3(c) provides for a $15 bad check charge which is the maximum amount allowed by ASFA.[23] (See Chapter 47 for a discussion of the remedies available when a consumer's check is dishonored.)

[22] Civil Code § 2981.9
[23] Civil Code § 2982(p)

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Section 4 – Disclaimer of warranties

The disclaimer of warranties in section 4 is intended to provide the maximum waiver possible within the constraints of numerous laws that restrict a seller's right to disclaim warranties. Note that the disclaimer of implied warranties applies only if the buyer does not "get a written warranty." Therefore, the disclaimer does not apply to a transaction including the sale of a new vehicle with a manufacturer's warranty. Additionally, the disclaimer does not apply if the dealer "enters into a service contract within 90 days" of the date of sale. Finally, California law prohibits implied warranties from being waived on vehicles sold as certified used vehicles.[24] (See Chapter 21 for a discussion of warranty issues.)

Section 5 – Used Car Buyers Guide

For used vehicle transactions (including demonstrators and other never-before-registered used vehicles), section 5 incorporates the provisions of the vehicle's Used Car Buyers Guide into the contract and states that the provisions of the guide override any contrary provisions in the contract, as required by federal law.[25] (See Chapter 21 for a discussion of the FTC's Used Car Rule.)

Buyers Guide and the single document rule

Because it is a part of the contract, a used vehicle buyer should be given a copy of the Buyers Guide before the contract is signed. Dealers should have used vehicle buyers sign the Buyers Guide acknowledging receipt, and keep a signed copy of the Buyers Guide in the deal file. Additionally, the best practice is physically attach (e.g., staple) to the contract a signed copy of the Buyers Guide.

Section 8 – Right to request credit verification from customer

When trying to get a contract purchased, dealership personnel often need proof of income or other documentation from the customer. Section 8 of the example contract contains a promise by the buyer to supply any documents and information necessary to "verify any item contained in your credit application." As discussed in Chapter 5, this language is of little use if the customer completed only a "five liner" credit application.

Section 9 – Negative credit report notice

Section 9 provides notice to the customer that the contract holder may report information such as late payments, missed payment, or other defaults to the credit bureaus.

Cash transactions

Conditional sale contract forms are designed to allow the sale of the vehicle on installment (credit) terms. It is not illegal to use a different type of contract to sell a vehicle for cash. However, conditional sale contract forms in use today include a number of key disclosures and other provisions important in both cash and credit transactions. For example, if a contract without typical conditional sale contract provisions is used, a dealer has

[24] Vehicle Code § 11713.18(a)(7)
[25] 16 CFR § 455.3(b)

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no lien in the vehicle and no right to repossess the vehicle if the customer defaults on his or her obligations, (for example, when a check given to pay the purchase price bounces). Accordingly, dealers should draft virtually all "cash" transactions as "one-pays" using a conditional sale contract form.

Unconditional cash transaction

Even transactions involving currency payments or confirmed wire transfers may not be "secure enough" for dealers to risk not using a conditional sale contract form with provisions that protect the seller.

One-pay contracts

A "one-pay" contract should be prepared by including the total purchase price as the total amount financed and showing the same amount as the one and only payment due in the payment schedule. The due date should be the date of the contract if payment is presented on that day or such other number of days after the contract date, if applicable.

One-pay option

Many transactions are documented as "either/or" deals where the payment schedule provides that the buyer will make installment payments **or** will make a large one-pay payment. As discussed earlier in the chapter, the proper way to document such either/or contracts is to include the installment terms in the payment schedule and then check the "one-pay option" box and fill in the due date there for receipt of the one-pay payment. Customers who seek to pay cash should not be forced to accept an "either/or" contract. A dealer can offer the "either/or" arrangement, but cannot require the customer to enter into an installment transaction as a condition of doing business. However, a dealer may require a more secure means of cash payment, such as a cashier's check in lieu of a personal check or a wire transfer in lieu of a cashier's check. Also, a dealer is not required to deliver a vehicle to a customer who has not yet obtained his or her own outside financing - knowingly doing so would obligate the dealer under California law to rescind the transaction and take back the vehicle if the customer is unable to obtain financing.[26] The either/or arrangement can be offered as an alternative in the event the buyer is unable to satisfy the dealer's concerns regarding the buyer's method of payment or source of funds.

Correcting contract mistakes

Both ASFA and TILA provide a means to correct bona fide errors.[27] Corrections that would increase the amount of the obligation, payment terms, or other substantive aspects of the transaction cannot be made without the customer's written consent. Under California law, the correction must be made no later than 30 days from the date of contract or 20 days from the date the contract is assigned to a finance source, whichever is later.[28] Even a timely correction that would not increase the obligations should be made by a dealer only after consulting with legal counsel, because ASFA and TILA have different and complex requirements for what may be corrected and how the correction may be accomplished.

[26] Civil Code § 2982.9
[27] 15 U.S.C. § 1640(b); Civil Code § 2984
[28] Civil Code § 2984

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CHAPTER 25: VEHICLE LEASE AGREEMENTS

This chapter reviews in detail a typical vehicle lease agreement form.

Legal background

Vehicle lease agreement transactions and documentation are governed by a variety of laws, including the federal Consumer Leasing Act (FCLA), Regulation M, the California Vehicle Leasing Act (CVLA), Song-Beverly, and Magnuson-Moss.[1] It is extremely important that dealership personnel understand how to fill out lease forms completely and correctly. Mistakes or omissions in completing a vehicle lease agreement can expose a dealer to claims of liability from the lessee and even the leasing company or bank holding the lease.

Example form

Leasing companies (including the captive finance companies) and banks each have their own lease agreement form. Although these forms all contain the same disclosures and notices required by California and federal law, and oftentimes follow the same broad outline, format differences do exist from form to form. Accordingly, while the lease form depictions in this chapter do not represent any particular leasing company or bank lease form, they should prove instructive for dealers seeking to understand applicable legal requirements. Presented below are instructions for completing the major sections of a consumer vehicle lease agreement where the dealer is the lessor and the customer is the lessee.

Identification of Lessor and Lessee

The name and address of the dealer together with the name(s) and address(es) of the lessee(s) should be filled in. Note that the dealer is the "lessor" under the lease agreement and will remain so until the lease agreement is assigned to the leasing company or bank.

1. PARTIES:

Lessor-Dealer Name	**Address**
Lessee Name	**Address**
Lessee Name	**Address**

[1] 15 U.S.C. §§ 1667 et seq. and 2301 et seq.; 12 CFR Part 213; Civil Code §§ 1792 et seq. and 2985.7 et seq.

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Vehicle Description

Regulation M requires a "brief" description of the vehicle being leased – sufficient to identify the vehicle to the dealer and lessee.[2] Although the law does not specify what particular information is required, the description should include all of the information called for in the example lease form.

2. DESCRIPTION OF VEHICLE

New/Used	Model Year	Make	Model	Body Style	Color	VIN	Odometer

Primary Use: • Personal, family or household. • Commercial, business or agricultural.

As with a conditional sale contract, it is important that dealership personnel ensure that this section is accurately completed to avoid unnecessary mistakes leading to confusion or legal liability. Note the following:

New/Used. The "new" or "used" status of the leased vehicle needs to be accurately stated. A demonstrator vehicle should be shown as "used." See Chapter 14 for a discussion of this topic.

Year, make and model. This information must accurately reflect the leased vehicle. For new vehicles, a precise description of the model can be found on the invoice or MSRP sticker.

Odometer reading. This should match the actual odometer reading on the leased vehicle at the time of delivery, as well as the odometer reading on other documents. This section should not be left blank when the lease is signed by the lessee as doing so could violate the CVLA.

Vehicle Identification Number. The CVLA specifically requires the VIN to be on the lease.[3]

Primary Use Box. The lessee will have the benefit of the various consumer protection statutes if the box is checked for "personal, family or household use." Therefore, if a vehicle is leased for commercial or business purposes, dealership personnel should ensure that the "commercial, business or agricultural" box is checked.

Description of Trade-in

The example lease form includes a section for a description of any vehicle being traded in, including the agreed upon value of the trade-in.

Description of Trade-in Vehicle

Year	Make	Model	Agreed Upon Value	$ _____
VIN			Amount Owed on Trade-in	$ _____
			Net Trade-in Allowance	$ _____

The description and agreed upon value of the trade-in vehicle must be included if either (1) any portion of the amount due at lease signing is paid with a net trade-in allowance, or (2) if the Itemization of Gross Capitalized

[2] 12 CFR § 213 .4(a)
[3] Civil Code § 2985.8(c)(3)

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Cost includes any portion of the trade-in's payoff. Dealership personnel should also fill in the amount of any payoff due on the trade-in and the resulting net trade-in allowance.

If the amount owed on the trade-in exceeds the agreed upon value, the net trade-in allowance should *not* be reflected as a negative number. Instead, the dealer can enter the net trade-in allowance as zero or "not applicable." In addition, court cases suggest that dealers and customers do not have unlimited freedom to specify any mutually acceptable number as the agreed value.[4] (See Chapter 11 for a more detailed discussion of trade-in valuation issues and Chapter 28 for a discussion of negative equity disclosures.)

Lease Box for Trade-in, Turn-in and other individualized agreements

California law requires vehicle lease agreements to contain a seven and one-half square inch blank box (lease box) for adding trade-in (payoff adjustment) agreements, lease turn-in agreements or arrangements, 10-day rescission rights and other individualized agreements to the lease. [5]

For Trade-in, Turn-in, and other individualized agreements

By:_____ By:_____
Lessee Lessor

Sample lease box provisions

Trade-in, turn-in, 10-day rescission rights and other individualized agreements are not included in the lease form, so they must be placed in the lease box to avoid violation of the single document rule. (See Chapter 26 for a more comprehensive discussion of the single document rule.) Examples of individualized agreements commonly placed in the lease box follow.

Payoff adjustment

> Dealer relied on information from Lessee and/or the lienholder or lessor of the trade-in vehicle to estimate the payoff owing on the trade-in vehicle to be $_____. If the actual payoff is more than that amount, Lessee will pay Dealer the difference on demand, and if it is less than that amount, Dealer will refund to Lessee any overage received from the lienholder or lessor of the trade-in vehicle.

Rescission if no financing

> Lessee agrees that if this lease cannot be assigned by Dealer to a financial institution on terms acceptable to Dealer and Dealer gives Lessee notice within 10 days, this lease will be rescinded. Lessee must then return the vehicle to the dealer in good condition and Dealer will then return to Lessee all consideration paid.

[4] Thompson v. 10,000 RV Sales, Inc. (2005) 130 Cal. App. 4th 950
[5] Civil Code § 2992

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Lease turn-in

Lessee is turning in the following lease vehicle: _____. Dealer will return the vehicle to _____ in its current condition and its current mileage of _____. [Dealer will also pay $_____ due under the lease on behalf of Lessee. All other sums due under the lease will be paid by Lessee.].

8-point type

All provisions added to the lease box must be printed in at least 8-point type.[6] This type size is small enough to allow for more than one individualized agreement in the lease box.

Signatures

Although not required by law, asking the lessee to place his or her signature or initials adjacent to any individualized agreements in the lease box is a good practice.

Adverse consequences if lease box not used

Desirable provisions such as payoff adjustment agreements and 10-day rescission rights are not included in the printed portion of many lease forms. If the lease form does not have such provisions, they need to be inserted in the lease box, or they will not be part of the lease transaction.

Additionally, if payoff adjustment agreements or 10-day rescission rights are agreed upon orally with the lessee, but left out of the lease box (or placed in a separate document), the dealer will be in violation of the lease single document rule. (See Chapter 26 for a discussion of this rule.)

Specific lease disclosure requirements

The FCLA and Regulation M require specific disclosures to be made and segregated in the lease agreement.[7]

Segregated disclosures

FEDERAL CONSUMER LEASING ACT SEGREGATED DISCLOSURES			
Amount Due at Lease Signing or Delivery (Itemized below) **$_____.**	**Monthly Payments** **Your first Monthly Payment of $_____ is due on _____, followed by _____payments of $_____ due on the _____ of each month.** **The total of your Monthly Payments is $_____.**	**Other Charges (not part of your Monthly Payment)** **Disposition fee (if you do not purchase the Vehicle)** **$ NA** **$ NA**	**Total Payments (The amount you will have paid by the end of the Lease)** **$_____.**

Amount Due at Lease Signing. This box must include the total amount to be paid by the lessee to the dealer prior to or at consummation of the lease or by delivery of the vehicle.

[6] Civil Code § 2985.8(a)
[7] 15 U.S.C. § 1667a; Reg. M, 12 CFR § 213.4

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Monthly Payments. The number, amount and due dates or periods of monthly payments scheduled under the lease, together with the total dollar amount of the monthly payments, must be disclosed in this box.

Other Charges. This box must contain the total amount of other charges payable by the lessee, itemized by type and amount, which are not included in the monthly or periodic payments. Since open-ended leases are rare among California new car dealers, such charges rarely exist.

Total of Payments. This box should contain the sum of (i) the amount due at lease signing, (ii) the total amount of monthly or periodic payments, and (iii) other charges which will be paid under the lease.

Itemization of amount due at lease signing

In addition to disclosing the total amount to be paid at lease signing, federal law requires specific itemization of this amount.[8]

Itemization of Amount Due at Lease Signing or Delivery

Amount Due at Lease Signing or Delivery:		How the Amount Due at Lease Signing or Delivery will be Paid:	
Capitalized Cost Reduction	$ _____	Net Trade-in Allowance	$ _____
First Monthly Payment	$ _____	Rebates and Noncash Credits	$ _____
Refundable Security Deposit	$ _____	Amount to be Paid in Cash	$ _____
Title, Registration and License Fees	$ _____		
Tax on Capitalized Cost Reduction	$ _____		
Document Processing Charge (Not a Governmental Fee)	$ _____		
Electronic Vehicle Registration or Transfer Charge (Not a Governmental Fee)	$ _____		
California Tire Fee	$ _____		
_____	$ _____		
_____	$ _____		
_____	$ _____	Total	$ _____
_____	$ _____		
Total	$ _____		

Capitalized Cost Reduction. The capitalized cost reduction is the "downpayment" on the leased vehicle that reduces the amount to be capitalized over the term of the lease.

Document Processing Charge. A dealer enrolled in the DMV Business Partner Automation Program (BPA Program) is authorized to charge a "document processing charge" of up to $85.[9] The document processing charge may not be represented as a governmental fee.[10] Franchised new vehicle dealers are required to register electronically through the BPA Program all vehicles they lease.[11]

Electronic Vehicle Registration or Transfer Charge New vehicle dealers are required to process all eligible registration transactions electronically using an authorized service provider (first line service provider).[12] Dealers are authorized to

DEALER TIP: NO DEFFERRED PAYMENT

The full amount to be paid at lease signing by the lessee should actually be paid at that time, as no legal authority exists to defer all or part of this amount to a later date.

[8] Reg. M, 12 CFR § 213.4
[9] Vehicle Code §§ 1685 and 4456.5(a)(1)(A)
[10] Civil Code § 2985.8(c)(5)
[11] Vehicle Code § 4456.4
[12] Vehicle Code § 4456

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"pass through" the actual amount charged by a first line service provider for providing license plate processing, postage, and the fees and services authorized under the Business Partner Automation Program.[13] This charge may not be represented as a governmental fee. Dealers, however, are not authorized to charge customers for internal dealer costs, charges from registration services, or amounts charged by a first line service provider for additional goods or services. Dealers who "outsource" electronic registration to a registration service may not collect any Electronic Vehicle Registration or Transfer Charge.

Line 2(C) – California Tire Fee. The tire fee is $1.75 per tire.[14] For four-wheel vehicles with a spare, the total is $8.75.

The tire fee applies to new tires only, so used vehicles sold with used tires do not incur a fee, although selling a used vehicle with new tires installed would require collection of the fee for each new tire. With demonstrators, the Board of Equalization (now restructured as part of the California Department of Tax and Fee Administration) has taken the legal position that dealers must self-report and remit the tire fee for at least the four tires on the ground when the vehicle is placed into demonstration use.[15] The dealer may then collect the tire fee for any spare tire when the vehicle is sold at retail.

DEALER TIP: ACCURATELY CALCULATE THE TIRE FEE
Dealership personnel should only charge the tire fee only as to new tires actually delivered.
WARNING: Many new vehicles do not have a spare tire and so care should be taken to accurately calculate the tire fee.

Itemization of Monthly Payment Amount

Regulation M also requires that the lease agreement disclose, step by step, how the amount of the monthly lease payment was calculated:[16]

Your Monthly Payment is determined as shown below:			
a.	**Gross Capitalized Cost. The Total Agreed Upon Value of the Vehicle ($_____) and any items you pay over the Lease Term (such as service contracts, insurance, and any outstanding prior credit or lease balance). For an itemization of this amount, see Section below.**		
b.	**Capitalized Cost Reduction. The amount of any net trade-in allowance, rebate, noncash credit, or cash you pay that reduces the Gross Capitalized Cost.**	$_____ -$_____	
c.	**Adjusted Capitalized Cost. The amount used in calculating your Base Monthly Payment.**	=$_____	
d.	**Residual Value. The value of the Vehicle at the end of the Lease used in calculating your Base Monthly Payment.**	-$_____	
e.	**Depreciation and any Amortized Amounts. The amount charged for the Vehicle's decline in value through normal use and for other items paid over the Lease Term.**		=$_____
f.	**Rent Charge. The amount charged in addition to the Depreciation and any Amortized Amounts.**		+$_____
g.	**Total of Base Monthly Payments. The Depreciation and any Amortized Amounts plus the Rent Charge.**		=$_____
h.	**Lease Payments. The number of payments in your Lease.**		_____
i.	**Base Monthly Payment**		=$_____
j.	**Monthly Sales/Use Tax**		+$_____
k.	**Total Monthly Payment ("Monthly Payment")**		=$_____

a. **Gross Capitalized Cost.** This figure should include the agreed upon value of the vehicle, plus additional charges paid over the lease term, such as for service contracts, insurance, and any

[13] Vehicle Code § 4456.5(a)(2)
[14] Public Resources Code § 42885
[15] Board of Equalization Revised Legal Opinion Letter dated August 22, 2007
[16] Reg. M, 12 CFR § 213.4(f)

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outstanding prior lease/credit balance. (This is the final figure from the "Itemization of Gross Capitalized Cost" section).

b. **Capitalized Cost Reduction.** This is the amount paid by the lessee, whether in the form of a rebate, noncash credit, net trade-in allowance, or cash to reduce the capitalized cost – in other words, the "downpayment."

c. **Adjusted Capitalized Cost.** This is the gross capitalized cost, less the capitalized cost reduction.

d. **Residual Value.** This is the value of the vehicle at the end of the lease term used in calculating the base monthly lease payment. This figure is usually supplied by the bank or leasing company.

e. **Depreciation and Any Amortized Amounts.** This is the adjusted capitalized cost, less the residual value.

f. **Rent Charge.** This is the amount charged in addition to the depreciation and any amortized amounts. In other words, this amount is the difference between the total of base monthly lease payments over the lease term minus the depreciation and any amortized amounts. This figure is usually supplied by the bank or leasing company.

g. **Total of Base Periodic Payments.** This figure is the depreciation and any amortized amounts plus the rent charge.

h. **Lease Payments.** This is the number of monthly lease payments to be paid under the lease.

i. **Base Monthly Payment.** This figure is determined by taking the aggregate dollar amount of lease payments to be made divided by the number of monthly lease payments.

j. **Monthly Sales/Use Tax** (estimated). This is the monthly component of upfront sales/use tax to be paid by the lessee during the lease.

k. **Total Monthly Payment.** This is the amount of the actual monthly lease payment to be paid by the lessee each month under the lease, which is the sum of the base monthly payment and monthly sale/use tax amounts.

Excess Mileage Charge

The lease must disclose the excess mileage charge which the lessee may owe at the end of the lease. The disclosure should specify the amount of the charge and the applicable mileage threshold.

> **Excessive Wear and Use.** You may be charged for excessive wear based on our standards for normal use and for mileage in excess of _____ miles at _____ cents per mile.

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Purchase Option

The lease must provide a statement of whether the lessee has an option to purchase the vehicle at the end of the lease term, together with the amount of the purchase price. This figure will generally be supplied by the bank or leasing company.

> **Purchase Option at End of Lease Term.** You have the option to buy this vehicle at the end of the lease term for $_____, plus official fees and taxes.

Official Fees and Taxes

Regulation M requires the lease to disclose the total dollar amount of all official and license fees, registration, title and taxes which will be paid by the lessee over the term of the lease.[17] The total dollar amount of these items will depend in part on estimated tax rates – meaning the total dollar amount may itself be an estimate.

> **OFFICIAL FEES AND TAXES.** The total amount you will pay for official and license fees, registration, title, and taxes over the term of your Lease, whether included with your monthly payments or assessed otherwise, is:
>
> **$_____. This amount is an estimate. The actual total of fees and taxes may be higher or lower depending on the tax rates in effect or the value of the leased property at the time a fee or tax is assessed.**

[17] Reg. M, 12 CFR § 213.4(n)

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Itemization of Gross Capitalized Cost

Under the CVLA, the lease must itemize and show the calculation of the vehicle's Gross Capitalized Cost.[18] The itemization and calculation should contain the following disclosures.

Itemization of Gross Capitalized Cost

You will pay for the following items over the Lease Term, as part of your Monthly Payment:

a. Agreed-Upon Value of the Vehicle as equipped at time of signing the Lease		$_____
b. Agreed-upon value of each accessory and item of optional equipment the lesser (Dealer) agrees to add to the vehicle after lease signing:		
i. _____	+	_____
ii. _____	+	_____
iii. _____	+	_____
iv. _____	+	_____
c. Taxes	+	_____
d. Initial Title, License and Registration Fees	+	_____
e. Service Contract (Optional)	+	_____
f. Credit Life Insurance Premium (Optional)	+	_____
g. Credit Disability Insurance Premium (Optional)	+	_____
h. Debt Cancellation Agreement (GAP) (Optional)	+	_____
i. Outstanding Prior Credit or Lease Balance	+	_____
j. Document Processing Charge (Not a Governmental Fee)	+	_____
k. Electronic Vehicle Registration or Transfer Charge (Not a Governmental Fee)	+	_____
l. Acquisition Fee	+	_____
Other Goods or Services (Describe)		
m. _____	+	_____
n. _____	+	_____
o. Gross Capitalized Cost	=	_____

a. **Agreed Upon Value of the Vehicle.** This figure must represent the agreed upon value of the vehicle as equipped at the time of signing the lease. In other words, this figure should not include the value or price of any accessories or options to be added after the signing of the lease.

b. **Agreed-Upon Value of Accessories**. This line should separately disclose the accessories and options to be added to the vehicle after the lease has been signed. The line should include not only a description of each accessory or option, but also the agreed-upon value or price. The price of these options should never be "buried in" or "rolled into" the Agreed-Upon Value of the vehicle.

c. **Taxes**. This line will list the sales/use tax due on the transaction.

d. **Initial Title, License and Registration Fees**. This line represents a disclosure of the amounts to be paid to the DMV, including amounts paid for title and registration fees.

e. **Service Contract (Optional).** If the lessee purchases an optional service contract, the total price for the service contract will be listed here.

f. **Credit Life Insurance Premium (Optional).** This line will contain the premium charged for any optional credit life insurance which the lessee elects to purchase.

[18] Civil Code § 2985.8(c)(2)(G)

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g. **Credit Disability Insurance Premium (Optional).** This line will contain the premium charged for any optional credit disability insurance which the lessee elects to purchase.

h. **Debt Cancellation Agreement (GAP) (Optional).** This line will contain the price of the GAP protection, (if not already provided in the lease without cost) which the lessee elects to purchase.

i. **Outstanding Prior Credit or Lease Balance.** The CVLA specifies exactly how to disclose negative equity financed in a lease transaction.[19] In essence, this line must show any portion of the negative equity remaining that will be amortized over the term of the lease. It is imperative to note that negative equity should never be "buried in" or "rolled into" the Agreed-Upon Value of the vehicle, as doing so violates the CVLA. (See Chapter 28 for a complete discussion of this topic.)

j. **Document Processing Charge.** As discussed earlier in the "Itemization of amount due at lease signing" section of this chapter, a new car dealer may charge a lessee a document processing charge of up to $80.[20] This charge is to be listed on this line.

k. **Electronic Vehicle Registration or Transfer Charge.** As discussed earlier in the "Itemization of amount due at lease signing" section of this chapter, dealers are authorized to "pass through" the actual amount charged by a first line service provider for providing license plate processing, postage, and the fees and services authorized under the Business Partner Automation Program.[21]

l. **Acquisition Fee.** An acquisition fee, sometimes called a "bank fee," is not defined by law, but is generally regarded as an administration fee which the assignee (leasing company) will charge for buying and booking the lease. No entry should be made here unless the dealer actually pays the fee.

m/n. **Other Goods or Services.** If other goods or services are included in the gross capitalized cost not described in any previously-listed category, such goods or services should be itemized on these lines by type and agreed-upon value.

o. **Gross Capitalized Cost.** This line represents the vehicle's Gross Capitalized Cost, which is the sum of the items in line a through n added together. This figure is then inserted into the first line of the Itemization of Monthly Payment Amount (see discussion above).

DEALER TIP: OTHER GOODS OR SERVICES
Dealers should consult with competent legal counsel to ensure that such goods or services may appropriately be included in an agreement to lease a vehicle.

[19] Civil Code § 2985.8(c)(4)
[20] Vehicle Code § 4456.5(a)(1)(A)
[21] Vehicle Code § 4456.5(a)(2)

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Identification of insurance

The lease is required to provide a brief identification of insurance paid through the lease – which generally could include credit life insurance and/or credit disability insurance.[22] The statement should include the type(s) and amount(s) of coverage and the cost (premium) to the lessee. An example of such a disclosure statement is on the following page. Because of the extensive licensing requirements, dealers are typically not in a position to include insurance products in a lease. (See Chapters 38 and 53 for a discussion of insurance issues.)

Optional Insurance

These coverages are not required to enter into this Lease and will not be provided unless you sign below. If insurance is purchased by you, the coverages are shown in a notice given to you on this date and are for the term of the Lease. (Please see below.)

Credit Life Insurance

_____	$ _____
INSURER	INITIAL COVERAGE AMOUNT
_____	$ _____
INSURED(S)	PREMIUM

_____ **LESSEE INITIALS** _____ **CO-LESSEE INITIALS**

Credit Disability Insurance

_____	$ _____
INSURER	MONTHLY COVERAGE AMOUNT
_____	$ _____
INSURED(S)	PREMIUM

_____ **LESSEE INITIALS** _____ **CO-LESSEE INITIALS**

Identification of Express Warranties

The lease must include a brief statement identifying all express warranties given by the manufacturer or dealer.[23] (See discussion of warranties issues in Chapter 21.)

[22] Reg. M, 12 CFR § 213.4(o); Civil Code § 2985.8(c)(2)(C)
[23] 15 U.S.C. 1667a(6); Reg. M, 12 CFR § 213.4(p)

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WARRANTY The Vehicle is covered by the warranty indicated below:

☐ Standard new Vehicle warranty provided by the manufacturer or distributor of the Vehicle.

☐ _____

Credit Application Notice

The CVLA requires that a notice be included in the lease that reads as follows: "you have the right to return the vehicle and receive a refund of any payments made if the credit application is not approved, unless non-approval results from an incomplete application or from incorrect information provided by you." [24]

Arbitration Clause

Generally most lease forms will include an arbitration provision. (See Chapter 48 for a discussion of arbitration issues.)

Notice and Signature Lines

Above the signature lines for the dealer and lessee, there are a number of boxes containing notices to the lessee required by the CVLA. [25]

Lease Signatures and Notices

THERE IS NO COOLING OFF PERIOD

California law does not provide for a "cooling off" or other cancellation period for vehicle leases. Therefore, you cannot later cancel this Lease simply because you change your mind, decided the vehicle costs too much, or wish you had acquired a different vehicle. You may cancel this Lease only with the agreement of the Lessor or for legal cause such as fraud.

By signing below, you acknowledge that: (1) You have read the entire Lease, including the back side; (2) You agree to all of the provisions of this Lease; (3) This is a Lease; you have no ownership interest in the Vehicle unless and until you exercise your option to purchase set forth in this Lease.

Notice to the Lessee: (1) Do not sign this Lease before you read it or if it contains any blank spaces to be filled in; (2) You are entitled to a completely filled in copy of this Lease; (3) Warning – Unless a charge is included in this Lease for public liability or property damage insurance, payment for that coverage is not provided by this Lease.

You acknowledge that you have received a completely filled-in copy of this Lease.

Lessee Signature _____ Co-Lessee Signature _____

Lessor _____ By _____ Title _____ Date _____

The lessee and any co-lessee must sign the lease where indicated below the boxes. It is also important to have the lease signed by the dealer (lessor) as well. Remember, the CVLA requires that the lessee receive a copy of the lease signed by both the lessee and the dealer (lessor).[26]

[24] Civil Code § 2985.8(f)

[25] Civil Code § 2985.8(d) and (e)
[26] Civil Code § 2985.8(g)

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CHAPTER 26: SINGLE DOCUMENT RULE

This chapter discusses the meaning and scope of the single document rule and uses examples to teach dealers how to avoid violating the rule.

DEALER TIP: SINGLE DOCUMENT RULE COMPLIANCE
The essence of the single document rule is to ensure that all important terms of the sale or lease transaction are in fact contained in the contract or lease.

Legal background

There are two versions of the single document rule – one for retail contracts and one for lease agreements.

The single document rule that applies to conditional sale contracts is part of the California Automobile Sales Finance Act – ASFA and provides that the contract must contain *all of the agreements of the buyer and seller with respect to the total cost and the terms of the payment for the vehicle*.[1] Accordingly, any agreement having to do with the total cost or terms of payment must be included in the contract itself, and not left to a side agreement or separate document.

The single document rule that applies to lease agreements is part of the California Vehicle Leasing Act – CVLA and provides that the lease agreement must contain *all of the agreements of the lessor and lessee with respect to the obligations of each party*.[2] Accordingly, the lease version of the rule is much broader than version that applies to retail sales. *All* obligations of the dealer or lessee – even those beyond total cost or terms of payment – must be in the lease itself and not left to a side agreement or separate document with the following exceptions:[3]

- Express warranties;
- Documents used to register, title, or transfer ownership of the leased vehicle and any trade-in vehicle with DMV;
- Insurance Policies;
- Service Contracts;
- Optional Debt Cancellation Agreements (e.g., GAP Contracts); and
- Documents memorializing the sale or lease of goods and services disclosed in the Itemization of Gross Capitalized Cost section of the lease agreement.

Dealers must be aware that even a verbal agreement between the dealer and customer will violate the rule if the oral agreement pertains to the obligations of the parties to a lease agreement or pertains to the cost or terms of payment relating to the vehicle in a retail deal.

[1] Civil Code § 2981.9
[2] Civil Code § 2985.8
[3] Civil Code § 2985.9

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Examples of the single document rule at work

Vehicle sale and lease transactions routinely become complicated as they necessarily involve a multitude of features and issues which go beyond the mere description of the vehicle and the price and payment terms. This complexity gives rise to the use of a host of different forms separate and apart from the contract and lease. The challenge for dealers is to recognize when the use of one of these secondary forms (or when making a verbal agreement relating to a transaction) will violate the rule. The following are examples which illustrate this challenge.

Payoff adjustment agreements

Under a payoff adjustment agreement, the dealer and customer essentially agree that if the payoff amount on a trade-in vehicle turns out to be greater than the amount quoted by the customer and listed on the contract, the customer will pay the excess to the dealer upon demand.

The problem is that the use of a separate form or document to provide this agreement will violate both the retail sale and lease versions of the single document rule.

This problem should never arise, however, because payoff adjustment language is already contained in the LAW RISC, and can easily be inserted into the lease agreement—eliminating the need for a separate agreement.

-Contract (preprinted)-

Trade-In Payoff Agreement: Seller relied on information from you and/or the lienholder or lessor of your trade-in vehicle(s) to arrive at the payoff amount shown as the Prior Credit or Lease Balance in Trade-In Vehicle(s). You understand that the amount quoted is an estimate. Seller agrees to pay the payoff amount shown as the Prior Credit or Lease Balance in Trade-In Vehicle(s) to the lienholder or lessor of the trade-in vehicle(s), or its designee. If the actual payoff amount is more than the amount shown as the Prior Credit or Lease Balance in Trade-In Vehicle(s), you must pay the Seller the excess on demand. If the actual payoff amount is less than the amount shown as the Prior Credit or Lease Balance in Trade-In Vehicle(s), Seller will refund to you any overage Seller receives from your prior lienholder or lessor. Except as stated in the "NOTICE" on the back of this contract, any assignee of this contract will not be obligated to pay the Prior Credit or Lease Balance shown in Trade-In Vehicle(s) or any refund. You agree to sign or provide any documents Seller reasonably requires to effect the transfer of the Trade-In Vehicle to Seller or its designee.

Buyer Signature X _____ **Co-Buyer Signature X** _____

-Lease box (dealer's DMS must print)-
For Trade-in, Turn-in, and other individualized agreements

Dealer relied on information from Lessee and/or the lienholder or lessor of the trade-in vehicle to estimate the payoff owing on the trade-in vehicle to be $_____. If the actual payoff is more than that amount, Lessee will pay Dealer the difference on demand, and if it is less than that amount, Dealer will refund to Lessee any overage received from the lienholder or lessor of the trade-in vehicle.

The language inserted into the lease box must be no smaller than 8-point type.

Dealers should not confuse Payoff Adjustment forms – which violate the rule – with "Payoff Authorization" forms – which generally do not violate the rule. Payoff Authorization forms should merely instruct the lienholder on the trade-in vehicle to accept the lien payoff directly from the dealer.

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Hold check agreements

A hold check agreement is an agreement between the dealer and customer whereby the dealer will hold a downpayment (or partial downpayment) check for a stated period of time before depositing it. Presumably this delay is to give the customer sufficient time to make a deposit to cover the check. Sometimes hold check agreements take the form of a separate written agreement or document, and other times they are just a verbal agreement between the dealer and customer. In either event, hold check agreements should not be utilized because they arguably violate both the retail sale and lease versions of the single document rule.

DEALER TIP: SIGNING LEASE BOX
Although not required by the law, dealership personnel should ask the lessee (and any co-lessee) to sign or place his or her initials in or adjacent to the language inserted in the lease box.

In addition, an agreement that some or all of the downpayment can be made beyond the date of the transaction is a deferred downpayment. A hold check agreement is not a sufficient substitute for the deferred downpayment disclosures required in a retail contract. (See Chapter 27 for the correct way to disclose deferred downpayments.) Lease transactions are not structured for deferred downpayments and lease contract forms do not provide for such payments.

Check deposit instructions to business office

Dealers may issue instructions to the business office to hold a check for a defined period of time using separate instruction forms, instructions written on the outside of an envelope containing the check, or even on post-it notes. The use of a separate document or written instruction in this manner will not in and of itself violate the single document rule, as it would merely constitute a directive from the F&I department to the business office as to when to deposit the check. It is the underlying agreement, oral or written, with the customer that violates the rule, not the intra-dealership communications. However, keep in mind that written instructions to the business office to hold a check for a defined period of time may be used as circumstantial evidence of an agreement between dealership personnel and a customer to hold a downpayment check, which would violate the rule if not disclosed on the face of the purchase contract.

Trade-in history disclosure form

When a customer trades in a vehicle, it is important for the dealer to know the vehicle's history, such as whether the vehicle has been in an accident, been classified as a lemon law buyback, or has an altered odometer, etc. For that reason, dealers often have a customer sign some version of a trade in history disclosure form – verifying that the trade-in has not been subject to any of these events. Dealers should exercise care in selecting such forms as some contain language that may violate the single document rule. For instance, some forms go beyond merely disclosing the history or condition of a trade-in vehicle, and seek to require customers to pay dealers if the actual history or condition differs from that described in the report. Such language, an example of which is shown below, runs the risk of violating the single document rule.

Do <u>not</u> use this language in a trade-in history report:

> If any representation you have made regarding the trade-in vehicle is untrue or misleading in any particular, you agree to pay Dealer, upon demand, the difference between the value actually realized by Dealer in disposing of the trade-in vehicle and the value attributed to that vehicle in the conditional sale contract.

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This additional language can violate the single document rule because it constitutes a potential payment obligation which is not contained in the retail contract or lease agreement.

Chapter 37 discusses trade-in history reports in more detail and describes the Reynolds and Reynolds Trade/Purchase Disclosure form (Form LAW-96135) that provides the necessary disclosures without violating the rule.

Due Bill / We Owe

Frequently, optional equipment or accessories purchased or leased by a customer will not be added to the vehicle until some future date. In that event, many dealers typically use a form with a title such as "Due Bill" or "We Owe." The purpose of this form is to list the equipment or accessories to be added to the vehicle when the customer gets around to returning to the dealership.

Unfortunately, some of these forms include additional language which poses single document rule problems. **The following is an example of language <u>not</u> to be used:**

> I hereby accept this Due Bill with the understanding that it is valid for only thirty (30) days from date of issuance.

The above language obligates the customer to return to the dealership within 30 days to have the optional equipment installed. The clear implication from that language is that the failure of the customer to act within that time frame could result in forfeiture of his or her right to have the equipment installed. This is a form of obligation which likely violates the lease version of the rule. Such language arguably violates the retail sale version of the rule because it involves equipment that has already been paid for and therefore may affect a term of payment or the total cost of the vehicle. In any event, the use of such additional language in a Due Bill is unnecessary and should be avoided.

Reynolds and Reynolds Due Bill Form (Form LAWCA-412Q) is an example of a type of due bill which avoids this pitfall by merely listing the work and accessories to be provided and not including other terms or restrictions. This form and other due bill issues are discussed in Chapter 39.

Lease turn-in agreements

In lease transactions, dealers may from time to time agree to accept the turn-in of a customer's lease vehicle – not in trade, but instead for the purpose of returning it to the customer's leasing company. In some instances a dealer may additionally agree to pay the final two or three lease payments for the customer. All of this is generally agreed to by the dealer as an accommodation to the customer.

Turn-in agreements of this type constitute an obligation for the dealer and must be contained in the lease agreement pursuant to the lease version of the single document rule.

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Turn-in agreements should be added to the lease box. In order to avoid this problem, all turn-in agreements should be placed in the blank lease box, as exemplified by the following:

For Trade-in, Turn-in, and other individualized agreements

> Lessee has returned the following lease vehicle to Lessor: _____ (description of the vehicle).
>
> Lessor agrees to return the vehicle to Lessee's leasing company. [Lessor further agrees to pay $_____ to the leasing company on behalf of the Lessee. All other payments and obligations will be paid and performed by the Lessee.]

The language inserted into the lease box must be no smaller than 8-point type. As mentioned previously, although not required by the law, dealers should ask the lessee (and any co-lessee) to sign or initial in or adjacent to the language in the lease box.

Side agreements or documents not in violation of the rule

There are a wide variety of other agreements and documents commonly used in sale or lease transactions which are not covered by and will not be in violation of the single document rule. These include:

- Express warranties
- Service contracts
- Insurance policies
- GAP waiver agreements related to a lease agreement (for conditional sale contracts, the terms and conditions of debt cancellation agreements coverage must be properly incorporated by reference, as described in Chapter 19, GAP Waivers)
- Documents evidencing coverage related to properly disclosed theft deterrent devices supplied by third parties, including items such as Lojack® and window etch

Other third-party documents describing a properly disclosed aftermarket good or service being provided to the customer by that third party, including a document supplied by the manufacturer or distributor respecting incentives and similar programs.

Unrelated transaction exception?

Neither the lease nor retail sale version of the single document rule extends so far as to apply to agreements that have nothing whatsoever to do with the purchase or lease of the vehicle. A simple example of this is where a customer, while leasing one vehicle, also asks the F&I representative to sell him a service contract for another vehicle he had purchased two months earlier. Another example comes from a Court of Appeals decision in the 2002 California case of *La Chapelle v. Toyota Motor Credit Corp*.[4] In that case the court stated that the lease version of the single document rule was not implicated by the dealer's agreement (which was not mentioned in the lease) to purchase, for cash, a vehicle owned by the customer at the same time the customer was leasing a

[4] 102 Cal. App. 4th 977

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new vehicle. The cash purchase transaction was neither financed in the lease nor did it contribute to any payment of funds due at lease signing. The cash purchase transaction was also apparently not conditioned on the lease being signed. However, dealers should not assume that a transaction is unrelated to a sale or lease transaction (and therefore does not implicate the single document rule) unless the specific fact pattern is reviewed by legal counsel.

Incorporation by reference

The single document rule is not violated by the use of a long contract form containing many provisions. Additionally as recognized by a 2009 California Attorney General opinion, this rule is not violated by the use of a multi-page document where pages are attached to each other and integrated into a single document (for example, by use of a sequential page numbering approach such as "1 of 4," "2 of 4," etc.).[5] Dealers following this incorporation by reference approach should make sure that any conditional sale contract or lease (both the original and copies) are attached (by staple or some other secure means) to the pages to be incorporated and include some reference or notation in the Blank Box on the contract that states the pages are actually part of the same document. While this Attorney General opinion suggests the sequential page numbering approach, it does not prohibit, for example, integrating a GAP addendum attached to a contract by specific language in the contract incorporating the GAP terms and conditions (such as language that is included in the OPTIONAL DEBT CANCELLATION AGREEMENT box in the LAW RISC).

Other limitations

Even if a document can technically be incorporated by reference to achieve compliance with the single document rule, there may be other laws that prohibit the inclusion of other agreement terms or the modification of terms present in the conditional sale contract. For example, a separate "hold check" agreement form incorporated into a conditional sale contract may avoid the single document rule but would still be subject to attack under other laws requiring specific methods of disclosing deferred downpayments. (See Chapter 27, Deferred Downpayments.) Accordingly, any potential addendum or add-on agreement should be pre-approved by legal counsel.

Finance company limitations

Dealers should be aware that each financial institution has its own policies on which contracts it will purchase from dealers. Some limit or prohibit any contracts with attached documents—even if properly incorporated by reference. Before incorporating or attaching any document to a contract, dealers should check with dealership financing sources for approval.

[5] 92 Ops. Cal Atty. Gen. 97 (2009)

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CHAPTER 27: DEFERRED DOWNPAYMENTS

This chapter discusses compliance issues relative to deferred downpayments.

Legal background

For retail sale contracts, both the California Automobile Sales Finance Act (ASFA) and Regulation Z contemplate payment and collection of the downpayment at the time of contract signing, not later.[1] However, these laws allow one alternative to immediate collection of the downpayment: the "deferred downpayment." Specific rules control the substance and disclosure of deferred downpayments. The retail sale version of the single document rule also applies to agreements relating to deferred downpayments (See Chapter 26, Single Document Rule).

For leases, Regulation M requires disclosure of the amount due at lease signing.[2] There are no provisions providing for "deferred downpayments" in either Regulation M or the California Vehicle Leasing Act. Any agreement with the customer for some of this amount to be paid at a later time could be attacked as inconsistent with and not allowed by the plain language of the regulation or the Vehicle Leasing Act. In addition, any side agreement of this kind would violate the lease version of the single document rule. (See Chapter 26, Single Document Rule.)

Identifying deferred downpayments

A deferred downpayment or "pickup payment" is a payment to be made (1) after vehicle delivery; and (2) that covers a portion of the downpayment.

Due after delivery

The rules discussed above apply to any portion of the downpayment that is not paid "at or prior to delivery." In other words, the rules apply if there is an agreement to accept some of the downpayment after delivery.

For example, if a customer forgets his or her checkbook or credit card, dealership personnel might tell the customer to drive off with the new vehicle, but to bring in a check for the downpayment within 48 hours. As a result, the entire downpayment is deemed a deferred downpayment and must be disclosed as such.

No deferred downpayment if check merely uncollectible

On the other hand, if dealership personnel do not agree prior to entering into the contract to hold checks or otherwise put off collection, the rules would not apply. For example, a dealer who meets with a customer the day after a vehicle is sold and delivered in an attempt to collect on a bounced downpayment check might agree to give the buyer 5 days to make the check good before resubmitting it to the bank. Because the dealer expected the bounced check to be good in the first place and never agreed otherwise at the time the contract was signed, this 5 day allowance would not trigger the deferred downpayment disclosures. The buyer and dealer agreed the

[1] Reg. Z, 12 CFR § 226.1 et seq.; Civil Code § 2982(c)
[2] Reg. M, 12 CFR § 213.4(b)

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downpayment was due prior to or at delivery and once this agreement is in place, subsequent events do not change that fact.

How long may payments be deferred?

All pickup payments must come due no later than the due date of the second regularly scheduled installment payment.[3] No interest or other finance charge may be imposed on any pickup payment.

Three required deferred downpayment disclosures

Once a payment has been identified as a deferred downpayment, the rules for disclosure are straightforward.

The process involves three disclosures, each of which is made in the following specific sections of the conditional sale contract form: (1) the downpayment itemization; (2) the schedule of payments; and (3) the Total of Payments.

First disclosure – itemization of amount financed, downpayment section

The first disclosure is in the trade-in/downpayment section of the itemization of amount financed - Section 6 of the LAW RISC. This single line item, labeled "Deferred Downpayment Payable to Seller" (Line 6.D of the example LAW RISC form), should show the sum total of all pickup payments.

D. Deferred Downpayment Payable to Seller	$	(D)
E. Manufacturer's Rebate	$	(E)
F. Other	$	(F)
G. Other	$	(G)
H. Other	$	(H)
I. Cash, Cash Equivalent, Check, Credit Card, or Debit Card	$	(I)
Total Downpayment (C through I)	$	(6)
(If negative, enter zero on line 6 and enter the amount less than zero as a positive number on line 1J and/or 1K above)		
7. Amount Financed (5 less 6)	$	(7)

The line used for the "cash" portion of the downpayment (Line 6.G in the example form) should not include the amount of any deferred downpayments. For example, where the total to be paid as a downpayment is $2,000 in cash plus two $750 pickup payments, Line 6.G should reflect $2,000 and Line 6.D should reflect $1,500, while Line 6 – the total downpayment – should reflect $3,500.

Second disclosure – the payment schedule

The second disclosure is made in the schedule of payments section of the Fed Box portion of the contract – which appears as a table in the example LAW RISC form and other contracts under the heading "Your Payment Schedule Will Be:"

[3] Reg. Z, 12 CFR § 226.2(a)(18); Civil Code § 2982(a)(6)(D)

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Dealers are required by law to list the amount and due date of each pickup payment in this payment schedule. There is no requirement that the pickup payments be labeled as such in the payment schedule. Pickup payments can be disclosed in the first three "one payment of" lines of the payment schedule in the example form. Practical problems will arise if there is no room on the schedule to list additional pickup payments. Because the rules for the layout of the payment schedule are complex, dealers facing such space limitations should consult legal counsel.

Third disclosure – the total of payments box

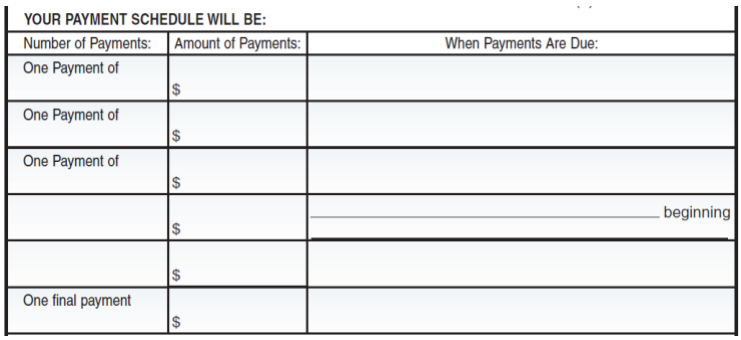
The third disclosure takes the form of including the sum total of all pickup payments into the "Total of Payments" section of the Fed Box. This disclosure is found in a box near the top of the contract under the heading "Federal Truth-in-Lending Disclosures."

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost you.	**Amount Financed** The amount of credit provided to you or on your behalf.	**Total of Payments** The amount you will have paid after you have made all payments as scheduled.	**Total Sale Price** The total cost of your purchase on credit, including your down payment of $ _____ is
_____ %	$ _____ (e)	$ _____ (e)	$ _____ (e)	$ _____ (e)

Normally, the Total of Payments box contains the total of all regular installment payments to be paid to holder of the contract, and does not include the downpayment. However, California law requires the *deferred* portion of any downpayment to be included along with all other scheduled payments in the Total of Payments box.[4] For example, if the total of payments in a transaction without any pickup payment is $24,000 and there is a $1,000 deferred downpayment, the Total of Payments box should show the $25,000 amount.

Deferred downpayment and negative equity together create Fed Box anomaly

Be aware of an anomaly that can happen when deferred downpayments are coupled with negative equity: the Total of Payments can exceed the Total Sale Price. This can result where the downpayment (deferred portion included) is offset to zero by negative equity. In such case, because (a) the deferred downpayment must be included in the Total of Payments and (b) the downpayment must be reflected as "zero" in the "Total Sale Price," the Total of Payments will exceed the Total Sale Price by the amount of the deferred downpayment.



YOUR PAYMENT SCHEDULE WILL BE:

Number of Payments:	Amount of Payments:	When Payments Are Due:
One Payment of	$	
One Payment of	$	
One Payment of	$	
	$	_____ beginning
	$	
One final payment	$	

[4] Civil Code § 2982(c)

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This anomaly is sometimes incorrectly perceived as an error in software programming or some other problem that needs to be fixed. In fact, it reflects a perfectly valid contract and is the direct result of correctly following the rules for disclosing deferred downpayments and negative equity.

Hold check agreements are risky even with proper disclosure

A hold check agreement is an agreement between the dealer and customer whereby the dealer will hold a downpayment (or partial downpayment) check for a stated period of time before depositing it. Such an agreement is generally reached to give the customer time to make a deposit to cover the check. Sometimes hold check agreements take the form of a separate written agreement or document, and other times they are just verbal agreements between the dealer and customer.

Even if the deferred downpayment disclosures are made as described above, the single document rule remains a concern. For instance, assume a dealer sells a customer a vehicle on January 1st, but enters into a written hold check agreement to not deposit all or part of the downpayment check until January 15th. Even if the proper deferred downpayment disclosures are made on the conditional sale contract, a separate agreement was made concerning the term of payment (i.e., that the check will be held by the dealer until a later date) that was not part of the conditional sale contract—arguably a violation of the single document rule. (See Chapter 26 for a detailed discussion of the single document rule.)

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CHAPTER 28: DISCLOSING NEGATIVE EQUITY

This chapter discusses the technical rules for disclosing negative equity on conditional sale contracts and leases.

Legal background

As discussed in Chapter 11, when a dealer acquires a trade-in vehicle, a number of legal compliance issues arise, including the proper disclosure of negative equity. "Negative equity" refers to any prior credit or lease balance on a trade-in that remains owing after off-setting the value of the trade-in vehicle and any other downpayment. The California Automobile Sales Finance Act (ASFA) and California Vehicle Leasing Act (CVLA) require the disclosure of negative equity.[1] Specifically, ASFA requires that a conditional sale contract disclose the "prior credit or lease balance, if any, owing on the property being traded in." The CVLA requires any prior credit or lease balance to be disclosed in a lease agreement.

Trade-In Vehicle(s)

1. Vehicle 1
Year _____ Make _____
Model _____ Odometer _____
VIN _____
a. Agreed Value of Property $ _____
b. Buyer/Co-Buyer Retained Trade Equity $ _____
c. Agreed Value of Property Being Traded-In (a–b) $ _____
d. Prior Credit or Lease Balance $ _____
e. Net Trade-In (c–d) (must be ≥ 0 for buyer/co-buyer to retain equity) $ _____
2. Vehicle 2
Year _____ Make _____
Model _____ Odometer _____
VIN _____
a. Agreed Value of Property $ _____
b. Buyer/Co-Buyer Retained Trade Equity $ _____
c. Agreed Value of Property Being Traded-In (a–b) $ _____
d. Prior Credit or Lease Balance $ _____
e. Net Trade-In (c–d) (must be ≥ 0 for buyer/co-buyer to retain equity) $ _____

Total Agreed Value of Property Being Traded-In (1c+2c) $ _____ *
Total Prior Credit or Lease Balance (1d+2d) $ _____ *
Total Net Trade-In (1e+2e) $ _____ *
(*See item 6A–6C in the Itemization of Amount Financed)

Disclosing negative equity in a conditional sale contract

Adequate disclosure of negative equity in a conditional sale contract subject to ASFA involves three steps:

- disclosing the trade-in vehicle's net negative value;
- disclosing any remaining negative equity after applying all downpayment cash and credits; and
- disclosing the remaining negative equity as an amount financed.

Disclosing the vehicle's net negative value

The trade-in values for each vehicle (established with the "overallowance" rules discussed in Chapter 11 in mind) should be inserted lines 1(a) in the "Trade-In Vehicle" box in the conditional sales contract.

The next line, 1(b), labeled "Buyer/Co-Buyer Retained Trade Equity" should show the total value in the trade-in vehicle retained by the buyer or co-buyer. Note, overallowances should never be used to create retained equity. Line 1(c)

[1] Civil Code §§ 2982(a)(6)(B) and 2985.8(c)(2)(F)

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reflects the difference between the agreed value and retained equity.

Line 1(d), labeled "Prior Credit or Lease Balance" should show the total payoff on the trade-in. "Net Trade-In" on Line 1(I) should reflect the difference between the prior balance and the Line 1(I)(c). Any net negative value that exists on the trade-in will be disclosed on line 1(e) because that line will show a negative number. However, two additional sets of calculations and disclosures are required to determine whether negative equity exists when the trade-in has a net negative value.

Negative equity only exists after application of all downpayment amounts

Before determining the total amount of negative equity to be added to the amount financed, California law requires any remaining portion of the downpayment, such as a cash downpayment or factory rebate, to be netted against the prior credit or lease balance.[2] The LAW RISC allows for up to two trade-in vehicles to be documented.

Procedurally, this is done by completing lines 6(A), (B), and (C) in the Itemization of Amount Financed section of the LAW RISC. Line 6(A) should reflect the total agree value of the vehicles as recorded on lines 1 and 2(c) of the Trade-In Vehicles box. Line 6(B) should reflect the prior credit or lease balance as recorded in line 1 and 2(d) of the Trade-In Vehicles box. Line 6(C) should reflect each Net Trade in, as recorded on line I and 2(e).

Finally, line 6 (Total Downpayment) should reflect the total of all downpayments, including trade-in vehicles. If the result is a positive number, it represents a net downpayment and should be shown as a positive number on the line 6. If the result is a negative number, the total downpayment line should reflect ZERO, but the negative result should be inserted as a *positive number* on line 1(J), as discussed below.

Net prior credit or lease balance in the itemization of amount financed

The final step in disclosing negative equity is to place the net negative number(s) resulting from the downpayment calculation as a *positive number(s)* on the "Prior Credit or Lease Balance (e) paid by Seller" line(s) of the LAW RISC (Lines 1(J) and 1(K)). *Any amount on these lines directly increases the amount financed.*

J. Prior Credit or Lease Balance (e) paid by Seller to _____ $_____ (J)
(see downpayment and trade-in calculation)
K. Prior Credit or Lease Balance (e) paid by Seller to _____ $_____ (K)
(see downpayment and trade-in calculation)

Disclosing negative equity in a consumer lease transaction

Proper negative equity disclosure in a consumer lease involves disclosing the amount of net negative trade-in value that will be paid through the lease, and including that amount in the itemization of gross capitalized cost.

[2] Civil Code § 2982(a)(6)

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Disclosing the vehicle's net value

Lease forms supply a space for the trade-in's description, agreed value, total payoff (or total prior credit or lease balance), and the net resulting trade-in value. These items must be completed accurately to determine whether there is any negative equity. To do so, dealers should follow the evaluation rules discussed in Chapter 11 and insert the vehicle's value, payoff and resulting net trade-in allowance. If the net trade-in allowance is less than zero, the trade-in allowance line should show "$0" or "n/a," but never a negative number. If the negative equity is to be included in the gross capitalized cost, it should be inserted as a positive number on the "prior credit or lease balance" line of the itemization of gross capitalized cost as discussed below.

Description of Trade-in Vehicle

Year	Make	Model	Agreed Upon Value $ _____ Amount Owed on Trade-in $ _____ Net Trade-in Allowance $ _____

Determining negative equity to be paid through the lease

Unlike ASFA, the laws governing leasing do not require the netting of all upfront cash against the negative equity. Therefore, a dealer should follow the disclosures in the particular lease form being used to determine the amount of negative equity to be included in the gross capitalized cost. Some lease forms have spaces to offset cash supplied by the customer against the negative value of the trade-in in order to reduce the amount of negative equity in the gross capitalized cost. Other forms isolate the section where the trade-in and its value and payoff are described, without a provision for using customer cash as an offset.

Disclosing negative equity included in the gross capitalized cost

Most lease forms provide a line to include an outstanding prior credit or lease balance in the itemization of gross capitalized cost section of the agreement. If negative equity exists and is to be included in the gross capitalized cost of the vehicle, the "prior credit or lease balance" line should indicate a positive number in an amount equal to the net negative equity. No portion of this amount should be included in any other line in the itemization.

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Itemization of Gross Capitalized Cost

You will pay for the following items over the Lease Term, as part of your Monthly Payment:

a. Agreed Upon Value of the Vehicle as equipped at time of signing the Lease		$_____
b. Agreed upon value of each accessory and item of optional equipment the lesser (Dealer) agrees to add to the vehicle after lease signing:		
i. _____	+	_____
ii. _____	+	_____
iii. _____	+	_____
iv. _____	+	_____
c. Taxes	+	_____
d. Initial Title, License and Registration Fees	+	_____
e. Service Contract (Optional)	+	_____
f. Credit Life Insurance Premium (Optional)	+	_____
g. Credit Disability Insurance Premium (Optional)	+	_____
h. Debt Cancellation Agreement (GAP) (Optional)	+	_____
i. Outstanding Prior Credit or Lease Balance	+	_____
j. Document Processing Charge (Not a Governmental Fee)	+	_____
k. Electronic Registration or Transfer Charge (Not a Governmental Fee)	+	_____
l. Acquisition Fee	+	_____
Other Goods or Services (Describe)		
m. _____	+	_____
n. _____	+	_____
o. Gross Capitalized Cost	=	_____

Some lease forms do not have a line pre-labeled as such. If acceptable to the leasing company, a dealer may insert the label "outstanding prior credit or lease balance" on a blank line in the itemization section and enter as a positive number that amount equal to the net negative equity being added to the gross capitalized cost.

Captive finance companies and banks are aware of the negative equity requirements

Dealership personnel should be wary of requests by finance company or bank personnel to replace properly disclosed negative equity with some type of overallowance or other improper method to hide or minimize negative equity. Accommodating such a request will result in a violation of the laws cited in this chapter. Advising a customer that additional upfront cash is needed to pay off or reduce the amount of negative equity is permissible.

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CHAPTER 29: USED VEHICLE CONTRACT CANCELLATION OPTION AGREEMENT

This chapter discusses the used vehicle contract cancellation option agreement required by California's Car Buyer's Bill of Rights.

Legal background

California law requires (with some exceptions) dealers to offer buyers of a used vehicle the right to purchase an agreement giving an option to cancel the purchase agreement within 2 days and return the vehicle for a full refund (used vehicle contract cancellation option agreement).[1] Independent from this requirement, DMV regulations further require dealers to furnish buyers with a written copy of the terms and conditions of any vehicle return program before obtaining the buyer's signature on a sales contract.[2]

Example form

Reynolds and Reynolds Contract Cancellation Option Agreement Form (Form LAWCA-CCOA-UMV) is shown on the following page.

Dealership personnel should complete the form by entering the data requested in the top section, including the cancellation option purchase price, date and time of the cancellation deadline and the applicable restocking fee. Note that if the buyer is purchasing a vehicle that he or she previously leased, an additional lessee restocking fee schedule section becomes applicable. (See the discussion of this topic under the heading "Lease buyout.")

If the customer decides *not* to purchase the option agreement, the "Decline" box should be signed by the buyer and any co-buyer, and a copy of the agreement given to the buyer and any co-buyer. The dealer's copy of this form should be retained with and for the same period of time as the dealer's copy of the sales contract.

If the customer decides to purchase the option agreement, the buyer and any co-buyer should sign the "Accept" box. Two copies of this form should then be given to the buyer and any co-buyer—one for their records, and one to exercise the return option. The dealer's copy should be retained with and for the same period of time as the dealer's copy of the sales contract.

[1] Vehicle Code § 11713.21
[2] 13 CCR § 260.07

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LAW LAWCA-CCOA-UMV

CONTRACT CANCELLATION OPTION AGREEMENT
[Used Motor Vehicle Purchases Only]

Buyer Name and Address: ("Buyer" or "you")	Co-Buyer Name and Address: ("Co-Buyer" or "you")	
Dealer Name and Address: ("Dealer", "we" or "us")	**Vehicle Delivery Date**	**Odometer Reading**
		Reading at time of delivery: _____

Vehicle Description: ("Vehicle")

Year:	Make:	Model:	VIN:

Cancellation Option Purchase Price	Cancellation Deadline	Mileage Restriction (Must not be less than 250 miles)
$	___/___/___ _____ ☐ AM ☐ PM	

Standard Restocking Fee Schedule	Lessee Restocking Fee Schedule	Restocking Fee
Vehicle Cash Price: $5,000 or less: $175.00 More than $5,000 but less than $10,000: $350.00 $10,000 or more: $500.00	A. Excess Mileage: $_____ B. Unrepaired Damage: $_____ C. Excess Wear & Tear: $_____ D. Maximum Restocking Fee (A plus B plus C): $_____	$_____

DECLINE
(For use only when customer chooses NOT to purchase a contract cancellation option)

You were offered, but choose not to purchase a contract cancellation option. You understand that California law does not provide for a "cooling off" or other cancellation period for used vehicle purchases unless you obtain a contract cancellation option.

I DO NOT WANT TO PURCHASE A CONTRACT CANCELLATION OPTION.

X _____ X _____
Buyer's Signature Co-Buyer's Signature

ACCEPT
(For use only when customer chooses to purchase a contract cancellation option)

TERMS AND CONDITIONS

1. Cancellation Option and Purchase Price. Under the terms and conditions of this Contract Cancellation Option Agreement ("Agreement"), you agree to buy the option to cancel the retail installment sale contract or purchase order for the Cancellation Option Purchase Price shown above.

2. Cancellation Option Period. You agree that if you exercise the option to cancel the retail installment sale contract or purchase order, you must do so by the Cancellation Date/Time shown above. You may not cancel after the Cancellation Date/Time shown above. You may not cancel if, after the Vehicle Delivery Date, the Vehicle's mileage exceeds the Odometer Reading by the number of miles shown in the Mileage Restriction box above.

3. Restocking Fee. If you exercise the option to cancel the retail installment sale contract or purchase order, you agree to pay a Restocking Fee in the amount shown in the Restocking Fee box above. The restocking fee schedules above indicate the maximum charges that a dealer may collect in connection with this Agreement pursuant to Section 11713.21 of the California Vehicle Code. The Standard Restocking Fee Schedule above applies to all Buyers except for a Buyer who was a lessee of the Vehicle immediately preceding his or her purchase of the Vehicle ("Lessee"). If you were the Lessee, the Lessee Restocking Fee Schedule above applies to you and you understand that the maximum restocking fee is determined by taking the sum of: (1) the amount you would have been obligated to pay to the lessor, at time of lease termination for excess mileage, unrepaired damage, and excess wear and tear as specified in your lease agreement as if you had not purchased the Vehicle or this contract cancellation option, and (2) the maximum restocking fee as shown in the Standard Restocking Fee Schedule. The amount paid by you for the contract cancellation option shall be applied toward the restocking fee.

4. Exercising Your Cancellation Option. You understand that this cancellation option gives you the right to cancel the purchase of the Vehicle and obtain a full refund, less the Restocking Fee shown above. You understand that the right to cancel will apply only if, within the time shown above, you:

- Personally sign and deliver to us a written notice exercising the right to cancel. You may do so by returning a copy of this Agreement with the "Exercise of Option to Cancel and Return the Vehicle" section completed below;
- Pay the Restocking Fee shown above;
- Return your copies of this Agreement, the original retail installment sale contract or purchase order, all related documents, and all original vehicle titling and registration documents, if any;
- Execute any documents reasonably necessary to effectuate the cancellation and refund, and as reasonably required to comply with applicable law; and
- Return the Vehicle free of all liens and encumbrances other than the lien or encumbrance created by the retail installment sale contract or loan arranged by us or any purchase money loan obtained from a third party and in the same condition as when it was received except for reasonable wear and tear and any mechanical problems that become evident after the Vehicle Delivery Date shown above that were not caused by you.

5. Other Important Terms and Conditions. In addition to the above, there are equally important terms and conditions located on the reverse side of this Agreement.

By signing below, you acknowledge and agree to the terms and conditions of this Agreement (including those on the reverse side).

I WANT TO PURCHASE A CONTRACT CANCELLATION OPTION.

X _____ X _____
Buyer's Signature Co-Buyer's Signature

EXERCISE OF OPTION TO CANCEL AND RETURN THE VEHICLE
(For use only when customer chooses to cancel the purchase contract and return the Vehicle)

By signing below, I elect to exercise my right to cancel the purchase of the Vehicle described in this Agreement. In doing so, I also agree to comply with all terms and conditions as set forth in this Agreement, including, but not limited to, those set forth in section 4 above.

Cancellation Deadline
___/___/___ _____ ☐ AM ☐ PM

X _____ X _____
Buyer's Signature Co-Buyer's Signature

Copy 1 - Buyer Copy 2 - Buyer Copy 3 - Dealer

LAW FORM NO. LAWCA-CCOA-UMV (REV. 7/13)

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OTHER IMPORTANT TERMS AND CONDITIONS

This Agreement does not otherwise affect or alter the legal rights, duties, obligations or liability of the Buyer, the Dealer, or the Dealer's agents or assigns, that would exist in the absence of this Agreement.

6. Duties as Vehicle Owner. As of the Vehicle Delivery Date, you are the owner of the Vehicle until the Vehicle is returned in accordance with this Agreement. You understand that, as the owner, you are required to fulfill any and all applicable legal and contractual obligations including, without limitation, the terms of any retail installment sale contract, parking citations, and toll violations. You also understand that the existence of this Agreement does not impose permissive user liability on the Dealer, or the Dealer's agents or assigns, under Cal. Veh. Code § 460, Cal. Veh. Code § 17150, or otherwise.

7. Refund. You understand that we will cancel the retail installment sale contract or purchase order and provide you with a full refund not later than the second day following the day on which you exercise your right to cancel the purchase in accordance with this Agreement. If we received a portion of the purchase price by credit card, or other third-party payer on the Buyer's account, the law permits us to refund that portion of the purchase price to the credit card issuer or third-party payer for credit to the Buyer's account.

8. Trade-in. If you were charged a fee for the contract cancellation option, we agree to keep any motor vehicle that you used as a downpayment or trade-in until you exercise the right to cancel or the right to cancel expires in accordance with this Agreement. If you exercise your right to cancel the purchase of the Vehicle in accordance with this Agreement, we agree to return to you, no later than the day following the day on which you exercise your option, any motor vehicle you used as a downpayment or trade-in. If, however, we inadvertently sell or otherwise transfer title to such motor vehicle as a result of a bona fide error, notwithstanding reasonable procedures designed to avoid that error, the inadvertent sale of the motor vehicle shall not be considered a violation of California law and we agree to provide you with a full refund as described in Section 7 above which will include the retail market value of the motor vehicle left as a downpayment or trade-in, or its value as stated in the contract or purchase order, whichever is greater.

If you were not charged a fee for the contract cancellation option and you exercise your right to cancel the purchase of the Vehicle in accordance with this Agreement, we agree to return to you, no later than the day following the day on which you exercise your option, any motor vehicle you used as a downpayment or trade-in or, if we have otherwise sold or transferred title to such motor vehicle, we agree to provide you with a full refund as described in Section 7 above which will include the fair market value of the motor vehicle left as a downpayment or trade-in, or its value as stated in the contract or purchase order, whichever is greater.

9. Maximum Charge for Contract Cancellation Option. Under California law, the maximum amount a dealer may charge for a contract cancellation option is as follows:

Cash Price of Vehicle	Maximum Charge for Contract Cancellation Option
$5,000 or less	$75
$5,000.01 - $10,000	$150
$10,000.01 - $30,000	$250
$30,000.01 - $39,999.99	1% of the cash price

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When option must be offered

A vehicle contract cancellation option agreement must be offered when a dealer is selling, for cash or credit, a used vehicle for personal, family, or household use for less than $40,000.[3] The requirement to offer this agreement does not apply to lease transactions. To determine which vehicles are "used," see Chapter 14.

When option not required

The law does not apply to vehicles sold for $40,000 or more; vehicles sold solely for commercial or business purposes; motorcycles; off-highway vehicles; recreational vehicles; or any vehicles not subject to registration (e.g., vehicles exported out of state).

Dealers are not required to offer the option to anyone who, within the preceding 30 days, exercised a used vehicle contract cancellation option with the same dealer.[4]

Documenting the option and customer acceptance or declination

The law requires the contract cancellation option agreement (if purchased) to be made on a document separate from the conditional sale contract.[5] Accordingly, the single document rule is not violated by doing so.

If included in conditional sale contract, the price of the cancellation option must be included in the pre-contract disclosure discussed in Chapter 22, and disclosed in the conditional sale contract (Line 1(L) of the LAW RISC).

Spanish and Asian-Language translation required

Chapter 31 discusses when a dealer is required to provide the buyer with a translated copy of the conditional sale contract and certain related documents. Because the cancellation option affects the terms of payment for the vehicle (e.g., restocking fees to be assessed if the contract is cancelled), it is recommended that a dealer provide a translated copy of the contract cancellation option agreement whenever a translated conditional sale contract is required.

Charging for the option

The price of the cancellation option is capped by law based on a "sliding scale" linked to the cash price of the vehicle (the cash price as disclosed on Line 1(A)(1) of the LAW RISC).[6] The caps are:

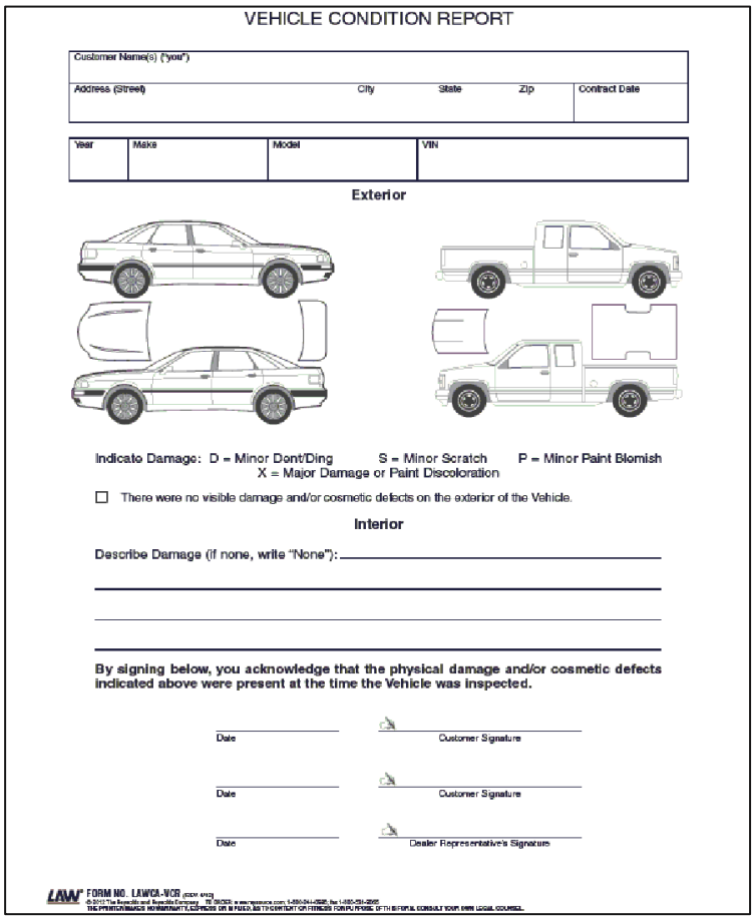
- $75 if the cash price is at or below $5,000;
- $150 if the cash price is over $5,000, but at or below $10,000;
- $250 if the cash price is over $10,000, but at or below $30,000; and
- 1% if cash price is over $30,000 but, below $40,000.

[3] Vehicle Code § 11713.21(a)(1)
[4] Vehicle Code § 11713.21(e)
[5] Vehicle Code § 11713.21(b)
[6] Vehicle Code § 11713.21(a)(2)

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Condition of vehicle

If a dealer and a used vehicle buyer enter into a contract cancellation option agreement, the condition of the used vehicle being purchased becomes of paramount importance because the buyer's right to return the vehicle is contingent upon the vehicle being returned in the same condition as when initially delivered (i.e., if additional damage occurs while the vehicle was under the customer's control, the dealer may refuse to cancel the contract). For this reason, dealership personnel should carefully review the condition of the vehicle at the time of sale and document that condition. The Reynolds and Reynolds Vehicle Condition Report Form (Form LAWCA-VCR), shown here, is designed for this purpose. If utilized, this form should be carefully completed, paying particular attention to describing existing damage to the vehicle. The completed form should be signed by the customer and a dealer representative. One copy of the signed form should be provided to the customer and a copy retained in the deal jacket.



VEHICLE CONDITION REPORT

Customer Name(s) ("you")

Address (Street) | City | State | Zip | Contract Date

Year | Make | Model | VIN

Exterior

Indicate Damage: D = Minor Dent/Ding S = Minor Scratch P = Minor Paint Blemish
X = Major Damage or Paint Discoloration

☐ There were no visible damage and/or cosmetic defects on the exterior of the Vehicle.

Interior

Describe Damage (if none, write "None"):

By signing below, you acknowledge that the physical damage and/or cosmetic defects indicated above were present at the time the Vehicle was inspected.

Date Customer Signature

Date Customer Signature

Date Dealer Representative's Signature

LAW FORM NO. LAWCA-VCR

Responsibility for vehicle

Until the cancellation option is exercised, the buyer is considered the owner of the vehicle and has the same responsibility as would any other owner for insurance, accidents, parking citations, and other liabilities. The law provides that the existence or exercise of the cancellation option will not change this allocation of responsibility.[7]

Keeping contracts subject to cancellation option "on hold"

After delivering a vehicle subject to a cancellation option, a dealer should consider placing a hold on further processing of the transaction, including cashing downpayment checks, filing the DMV report of sale, assigning the contract to a finance source, and paying off or selling any trade-in. Then, if the cancellation option is exercised, the dealer will not be put in the risky position of having to refund uncleared funds to the customer or recover the payoff on the trade-in vehicle. Dealership personnel should not reach an agreement with a customer regarding this holding process (especially as to check-cashing), as single document rule/deferred downpayment disclosure problems could result. (See Chapter 26, Single Document Rule and Chapter 27, Deferred Downpayments.)

[7] Vehicle Code § 11713.21(f)

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Lease buyout

While banks and other leasing companies are not prohibited from selling a leased vehicle directly to the lessee pursuant to a buyout option in the lease, many captive finance companies allow their dealers to act as the seller in such transactions. In such situations, because the leased vehicle is "used," the dealer must offer a cancellation option to the customer, assuming the vehicle is not exempt.

Unscrupulous lessees may be tempted to exercise a lease buyout option and then purchase a contract cancellation option agreement, which they would exercise to avoid any required payments for excess mileage or damage under the lease agreement. To dissuade such activity, the law provides that the normally-capped restocking fee may be increased in lease-buyout situations.[8] The applicable restocking fee in such situations is the combination of the statutory restocking fee (which depends upon the value of the vehicle) plus the amount the buyer would be required to pay the lessor for excess mileage, unrepaired damage and excess wear and tear under the terms of the lease agreement. To charge this increased restocking fee, a dealer must provide the buyer with a notice stating that the restocking fee will be increased in such circumstances and explaining the nature of the charges involved. This notice is included in the example contract cancellation option agreement form.

Exercising the cancellation option and restocking fee

See Chapter 44, for a discussion of the exercise by the buyer of the cancellation option and the maximum restocking fee that may be imposed.

[8] Vehicle Code § 11713.21(b)(5)

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CHAPTER 30: CO-SIGNER NOTICE

This chapter discusses special notification rights of co-buyers and co-lessees.

Legal background

FTC regulations require notices to co-signers on consumer contracts. These requirements are adopted and amplified by California law. That law says that if a dealer obtains the signature of a second person on a conditional sale contract, the dealer is required to give that second person a specific notice, in at least 10-point type, generally warning that person about his or her legal obligation under the contract.[1] In a lease transaction, a similar notice is required to be given to any co-lessee who does not receive the motor vehicle that is subject of the lease agreement.[2] Beginning on January 1, 2023, the notice must be provided in English as well as Spanish, Chinese, Tagalog, Vietnamese, and Korean, regardless of the language used to negotiate the transaction.[3]

Failure to comply with this notice requirement has major consequences: neither the dealer nor finance company may bring any lawsuit or enforce any security interest against the co-buyer or co-lessee.[4] In short, the co-buyer or co-lessee will not be liable for any debts or obligations under the retail contract or the lease agreement in the event of the dealer's failure to comply with this notice requirement.

Timing of the notice

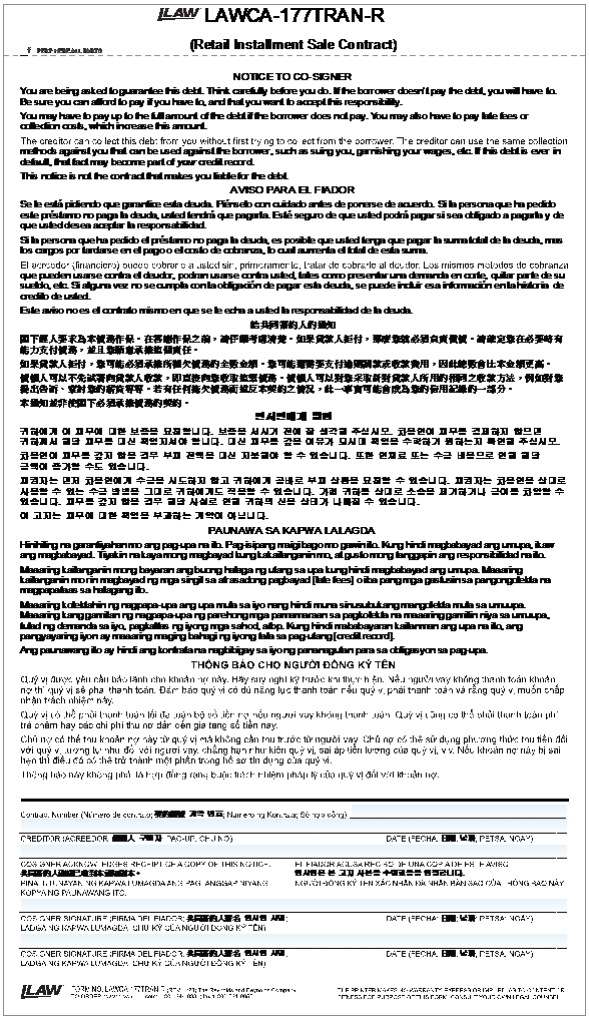
The notice must be given to the co-buyer or co-lessee before that person executes the conditional sale contract or lease agreement.[5]

Copy of contract or lease to co-buyer or co-lessee

Each person entitled to the notice must also be given his or her own copy of the conditional sale contract or lease agreement.[6] Because many conditional sale contract form sets do not have a second customer copy, a dealer needs to develop a protocol to handle this requirement. This requirement may be fulfilled by giving the co-buyer or co-lessee an unused copy that is part of the conditional sale contract or lease agreement set, or a complete, legible, and full-size photocopy of the contract.

[1] Civil Code § 1799.91(a)
[2] Civil Code § 1799.91(d)
[3] Civil Code §§ 1632(b) and 1799.91
[4] Civil Code § 1799.95
[5] Civil Code § 1799.91(a) and (d)
[6] Civil Code § 1799.93(b)

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LAWCA-177TRAN-R

(Retail Installment Sale Contract)

NOTICE TO CO-SIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become part of your credit record.

This notice is not the contract that makes you liable for the debt.

AVISO PARA EL FIADOR

Se le está pidiendo que garantice esta deuda. Piénselo con cuidado antes de ponerse de acuerdo. Si la persona que ha pedido este préstamo no paga la deuda, usted tendrá que pagarla. Esté seguro de que usted podrá pagar si sea obligado a pagarla y de que usted desea aceptar la responsabilidad.

Si la persona que ha pedido el préstamo no paga la deuda, es posible que usted tenga que pagar la suma total de la deuda, más los cargos por tardanse en el pago o el coslo de cobranza, lo cual aumenta el total de esta suma.

El acreedor (financiero) puede cobrar a usted sin, primeramente, tratar de cobrarle al deudor. Los mismos métodos de cobranza que pueden usarse contra el deudor, podrían usarse contra usted, tales como presentar una demanda en corte, quitar parte de su sueldo, etc. Si alguna vez no se cumple con la obligación de pagar esta deuda, se puede incluir esa información en la historia de credito de usted.

Este aviso no es el contrato mismo en que se le echa a usted la responsabilidad de la deuda.

給共同簽約人的通知

Hinihiling na garantiyahan mo ang pag-upa na ito. Pag-isipang maigibago mo gawinilo. Kung hindi magbabayad ang umupa, ikaw ang magbabayad. Tiyakin na kaya mong magbayad kung kakailanganin mo, at gusto mong tanggapin ang responsibilidad nailo.

Maaaring kailanganin mong bayaran ang buong halaga ng utang sa upa kung hindi magbabayad ang umupa. Maaaring kailanganin mo rin magbayad ng mga singil sa atrasadong pagbayad [late fees] o iba pang mga gastusin sa pangongolekta na magpapataas sa haliganng ito.

Maaaring kolektahin ng nagpapa-upa ang upa mula sa iyo nang hindi muna sinusubukang mangolekta mula sa umupa. Maaaring kang gamitan ng nagpapa-upa ng parehong mga pamamaraan sa pagkolekta na maaaring gamitin niya sa umupa, tulad ng demanda sa iyo, pagkalas ng iyong mga sahod, atbp. Kung hindi mababayaran kailamman ang upa na ito, ang pangyayaring iyon ay maaaring maging bahagi ng iyong tala sa pag-utang [credit record].

Ang paunawang ito ay hindi ang kontrata na nagbibigay sa iyong parangalan para sa obligasyon sa pag-upa.

THÔNG BÁO CHO NGƯỜI ĐỒNG KÝ TÊN

Quý vị được yêu cầu bảo lãnh cho khoản nợ này. Hãy suy nghĩ kỹ trước khi thực hiện. Nếu người vay không thanh toán khoản nợ thì quý vị sẽ phải thanh toán. Đảm bảo quý vị có đủ năng lực thanh toán nếu quý vị phải thanh toán và rằng quý vị muốn chấp nhận trách nhiệm này.

Quý vị có thể phải thanh toán tối đa toàn bộ số tiền nợ nếu người vay không thanh toán. Quý vị cũng có thể phải trả thêm hay các chi phí thu nợ dẫn đến gia tăng số tiền này.

Chủ nợ có thể thu hồi khoản nợ này từ quý vị mà không cần thu trước từ người vay. Chủ nợ có thể sử dụng phương thức thu tiền đối với quý vị, tương tự như đối với người vay, chẳng hạn như kiện quý vị, sai áp tiền lương của quý vị, v.v. Nếu khoản nợ này bị sai hẹn thì điều đó có thể trở thành một phần trong hồ sơ tín dụng của quý vị.

Thông báo này không phải là hợp đồng ràng buộc trách nhiệm pháp lý của quý vị đối với chủ nợ.

Contract Number (Número de contrato; 계약 번호; Numero ng Kontrata; Số hợp đồng): _____

CREDITOR (ACREEDOR; 채권자; TAO-UTI; CHỦ NỢ): _____ DATE (FECHA; 日期; 날짜; PETSA; NGÀY): _____

CO-SIGNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTICE.
共同簽約人確認已收到本通知書副本。
KINILALA NG KAPWA LUMAGDA ANG PAGTANGGAP NG ISANG KOPYA NG PAUNAWANG ITO.

EL FIADOR ACUSA RECIBO DE UNA COPIA DE ESTE AVISO.
簽約者在此 確認 收到 本 通知書 的 一份 副本。
NGƯỜI ĐỒNG KÝ THỪA NHẬN ĐÃ NHẬN BẢN SAO CỦA THÔNG BÁO NÀY

CO-SIGNER SIGNATURE (FIRMA DEL FIADOR; 共同簽約人簽名; 연대보증 서명; LAGDA NG KAPWA LUMAGDA; CHỮ KÝ CỦA NGƯỜI ĐỒNG KÝ TÊN): _____ DATE (FECHA; 日期; 날짜; PETSA; NGÀY): _____

CO-SIGNER SIGNATURE (FIRMA DEL FIADOR; 共同簽約人簽名; 연대보증 서명; LAGDA NG KAPWA LUMAGDA; CHỮ KÝ CỦA NGƯỜI ĐỒNG KÝ TÊN): _____ DATE (FECHA; 日期; 날짜; PETSA; NGÀY): _____

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No spousal exception

Prior to 2023, if the buyer/lessee and co-buyer/co-lessee were married to one another, the notice was not required. However, beginning January 1, 2023, the notice is required in *all* transactions involving a co-buyer or co-lessee, regardless of the relationship to the buyer or lessee.

Content of notice

The exact language of the notice for conditional sale contracts and for lease agreements is set forth in the statute. The notice must contain English, Spanish, Chinese, Tagalog, Vietnamese, and Korean translations of the required text.

Because there are two different versions of the notice (one applicable to retail contracts, and one applicable to leases) a single form may not be used to satisfy both requirements.



LAWCA-177LTRAN-R

(Lease Agreement)

NOTICE TO COSIGNER

You are being asked to guarantee this lease. Think carefully before you do. If the lessee doesn't pay, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount owed on the lease if the lessee does not pay. You may also have to pay late fees or other collection costs, which increase this amount.

The lessor can collect on the lease from you without first trying to collect from the lessee. The lessor can use the same collection methods against you that can be used against the lessee, such as suing you, garnishing your wages, etc. If this lease is ever in default, that fact may become part of your credit record.

This notice is not the contract that makes you liable for the lease obligation.

AVISO PARA EL FIADOR

Se le está pidiendo que garantice este arrendamiento. Piénselo con cuidado antes de ponerse de acuerdo. Si el arrendatario no paga, usted tendrá que pagar. Esté seguro de que usted podrá pagar si sea obligado a pagar y de que usted desea aceptar la responsabilidad.

Si el arrendatario no paga, es posible que usted tenga que pagar la suma total debida en el contrato de arrendamiento, más los cargos por tardanse en el pago o el coslo de cobranza, los cuales aumentan el total de esta suma.

La compañía arrendadora puede cobrarle a usted por la suma debida en el arrendamiento, sin, primeramente, tratar de cobrarle al arrendatario. Los mismos métodos de cobranza que pueden usarse contra el arrendatario, podrían usarse contra usted, tales como presentar una demanda en corte, quitar parte de su sueldo, etc. Si alguna vez no se cumple con la obligación del arrendamiento, se puede incluir esa información en la historia de credito de usted.

Este aviso no es el contrato mismo en que se le echa a usted la responsabilidad del arrendamiento.

給共同簽約人的通知

閣下被人要求為本被賃作保。在答應作保之前，請仔細考慮清楚。如果承租人拖付，那麼您就必須負責支付。請確定您在必要時有能力支付債務，並且願意承擔這個責任。

如果承租人拖付，您可能必須承擔所欠租金的全數金額。您可能還需要支付逾期罰款或收取費用，因此這些會比本金額更高。

出租人可以不先試著向承租人收款，即直接向您收取租金。出租人可以對您采取針對承租人所用的相同之收款方法，例如對您提出告訴、查封您的薪資等等。若有任何拖欠租金行為之情況，此一事實可能會成為您的信用記錄的一部分。

本通知並非使閣下必須承擔租賃義務的契約。

연서보증계약 통지

귀하에게 이 리스에 대한 보증을 요청합니다. 보증을 서시기 전에 잘 생각해 주십시오. 임차인이 월세하지 않으면 귀하께서 대신 지불해야 합니다. 대신 지불할 경우 여유가 되시며 책임을 수락하기 원하는지 확인해 주십시오.

임차인이 대금을 지불하지 않을 경우 리스로 전액을 대신 지불해야 할 수 있습니다. 또한 연체료 또는 기타 수금 비용으로 인해 채무 금액이 증가할 수도 있습니다.

임대인은 먼저 임차인에게 수금을 시도하지 않고 귀하에게 곧바로 리스료를 상환을 요청할 수 있습니다. 임대인은 임차인을 상대로 사용할 수 있는 수금 방법을 그대로 귀하에게도 적용할 수 있습니다. 가령 귀하를 상대로 소송을 제기하거나 급여를 차압할 수 있습니다. 리스료를 갚지 않을 경우 채무 사실로 인해 귀하의 신용 상태가 나빠질 수 있습니다.

이 고지는 리스 의무에 대한 책임을 부과하는 계약이 아닙니다.

PAUNAWA SA KAPWA LALAGDA

Hinihiling na garantiyahan mo ang pag-upa na ito. Pag-isipang maigi bago mo gawin ito. Kung hindi magbabayad ang umupa, ikaw ang magbabayad. Tiyakin na kaya mong magbayad kung kakailanganin mo, at gusto mong tanggapin ang responsibilidad na ito.

Maaaring kailanganin mong bayaran ang buong halaga ng utang sa upa kung hindi magbabayad ang umupa. Maaaring kailanganin mo rin magbayad ng mga singil sa atrasadong pagbayad [late fees] o iba pang mga gastusin sa pangongolekta na magpapataas sa haliganng ito.

Maaaring kolektahin ng nagpapa-upa ang upa mula sa iyo nang hindi muna sinusubukang mangolekta mula sa umupa. Maaaring kang gamitan ng nagpapa-upa ng parehong mga pamamaraan sa pagkolekta na maaaring gamitin niya sa umupa, tulad ng demanda sa iyo, pagkalas ng iyong mga sahod, atbp. Kung hindi mababayaran kailamman ang upa na ito, ang pangyayaring iyon ay maaaring maging bahagi ng iyong tala sa pag-utang [credit record].

Ang paunawang ito ay hindi ang kontrata na nagbibigay sa iyo ng parangalan para sa obligasyon sa pag-upa.

THÔNG BÁO CHO NGƯỜI ĐỒNG KÝ TÊN

Quý vị được yêu cầu bảo lãnh cho hợp đồng cho thuê này. Hãy suy nghĩ kỹ trước khi thực hiện. Nếu người thuê không thanh toán thì quý vị sẽ phải thanh toán. Đảm bảo quý vị có đủ năng lực thanh toán nếu quý vị phải thanh toán và rằng quý vị muốn chấp nhận trách nhiệm này.

Quý vị có thể phải thanh toán tối đa toàn bộ số tiền nợ theo hợp đồng cho thuê nếu người thuê không thanh toán. Quý vị cũng có thể phải thanh toán phí trễ hẹn hay các chi phí thu nợ dẫn đến gia tăng số tiền này.

Người cho thuê có thể thu tiền theo hợp đồng cho thuê từ quý vị mà không cần thu trước từ người thuê. Người cho thuê có thể sử dụng phương thức thu tiền đối với quý vị tương tự như đối với người thuê, chẳng hạn như kiện quý vị, sai áp tiền lương của quý vị, v.v. Nếu hợp đồng cho thuê này bị vi phạm thì điều đó có thể trở thành một phần trong hồ sơ tín dụng của quý vị.

Thông báo này không phải là hợp đồng ràng buộc trách nhiệm pháp lý của quý vị đối với các nghĩa vụ, trong hợp đồng cho thuê.

Contract Number (Número de contrato; 계약 번호; Numero ng Kontrata; Số hợp đồng cho thuê): _____

LESSOR (ARRENDADOR; 임대인; MAGPAPA-UPA; CHỦ CHO THUÊ): _____ DATE (FECHA; 日期; 날짜; PETSA; NGÀY): _____

COSIGNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTICE.
共同簽約人確認已收到本通知書副本。
KINILALA NG KAPWA LUMAGDA ANG PAGTANGGAP NG ISANG KOPYA NG PAUNAWANG ITO.

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簽約者在此 確認 收到 本 通知書 的 一份 副本。
NGƯỜI ĐỒNG KÝ THỪA NHẬN ĐÃ NHẬN BẢN SAO CỦA THÔNG BÁO NÀY

COSIGNER SIGNATURE (FIRMA DEL FIADOR; 共同簽約人簽名; 연대보증 서명; LAGDA NG KAPWA LUMAGDA; CHỮ KÝ CỦA NGƯỜI ĐỒNG KÝ TÊN): _____ DATE (FECHA; 日期; 날짜; PETSA; NGÀY): _____

COSIGNER SIGNATURE (FIRMA DEL FIADOR; 共同簽約人簽名; 연대보증 서명; LAGDA NG KAPWA LUMAGDA; CHỮ KÝ CỦA NGƯỜI ĐỒNG KÝ TÊN): _____ DATE (FECHA; 日期; 날짜; PETSA; NGÀY): _____

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Example form for retail contracts

Reynolds and Reynolds Notice to Cosigner Form (Form LAWCA-177TRAN-R)

Example form for leases

Reynolds and Reynolds Notice to Cosigner Form (Form LAWCA-177LTRAN-R)

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CHAPTER 31: SPANISH AND ASIAN-LANGUAGE TRANSLATIONS

This chapter discusses legal requirements for providing customers with foreign language translations of their retail contract or lease agreement.

Legal background

California law provides that if a conditional sale contract or lease agreement with a consumer is negotiated primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, then the customer must be given (in addition to the English-language version) a translation of that contract or lease agreement in the language in which it was negotiated.[1] That law further provides that the customer must also be given a translation in the relevant language of any subsequent document which makes substantial changes in the rights and obligations of the dealer and the customer.

If the dealer violates any of these translation requirements, the customer is entitled to rescind the contract or lease agreement and receive a refund for any payments he or she made.[2] Additionally, the dealer may be required to repurchase the contract from the financial institution holding it.

Translation requirement triggered by negotiations

This foreign-language translation requirement is triggered if the dealer and the customer negotiate primarily in one of five specified languages – Spanish, Chinese, Tagalog, Vietnamese, or Korean – whether such negotiations are oral or in writing. If the negotiations are conducted primarily in one of the specified languages, then the translation of the contract or lease agreement in that language must be given. It does not matter if the customer understands or is even fluent in English, or expresses no need for a translation. When negotiations occur both in English and one of the specified languages, determining the primary negotiation language may be difficult, and the best practice is to provide a translated contract in such instances.

DEALER TIP: SUBSTANTIAL NON-ENGLISH NEGOTIATIONS
If any substantial negotiations occur in one of the specified languages, the best practice for dealership personnel is to comply with the translation requirement.

Translated contract must be filled in completely

A blank foreign language translation of the conditional sale contract or lease agreement does not satisfy the requirements of the law. All of the entries inserted into the English-language contract or lease agreement, such as names, addresses, vehicle descriptions, descriptions of other goods and services, numerals, dollar amounts and dates, should likewise be inserted into the translated contract or lease agreement. However, these entries need not themselves be translated.[3]

[1] Civil Code § 1632
[2] Civil Code § 1632(k)
[3] Civil Code § 1632(i)

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Giving the translated contract or agreement to the customer

The filled-out foreign language translation of a contract or lease agreement must be given to the customer *before* the customer signs the English-language version. Failure by dealership personnel to give the translation prior to obtaining a signature on the English-language contract or lease agreement is a violation of this law.[4]

Signature not required

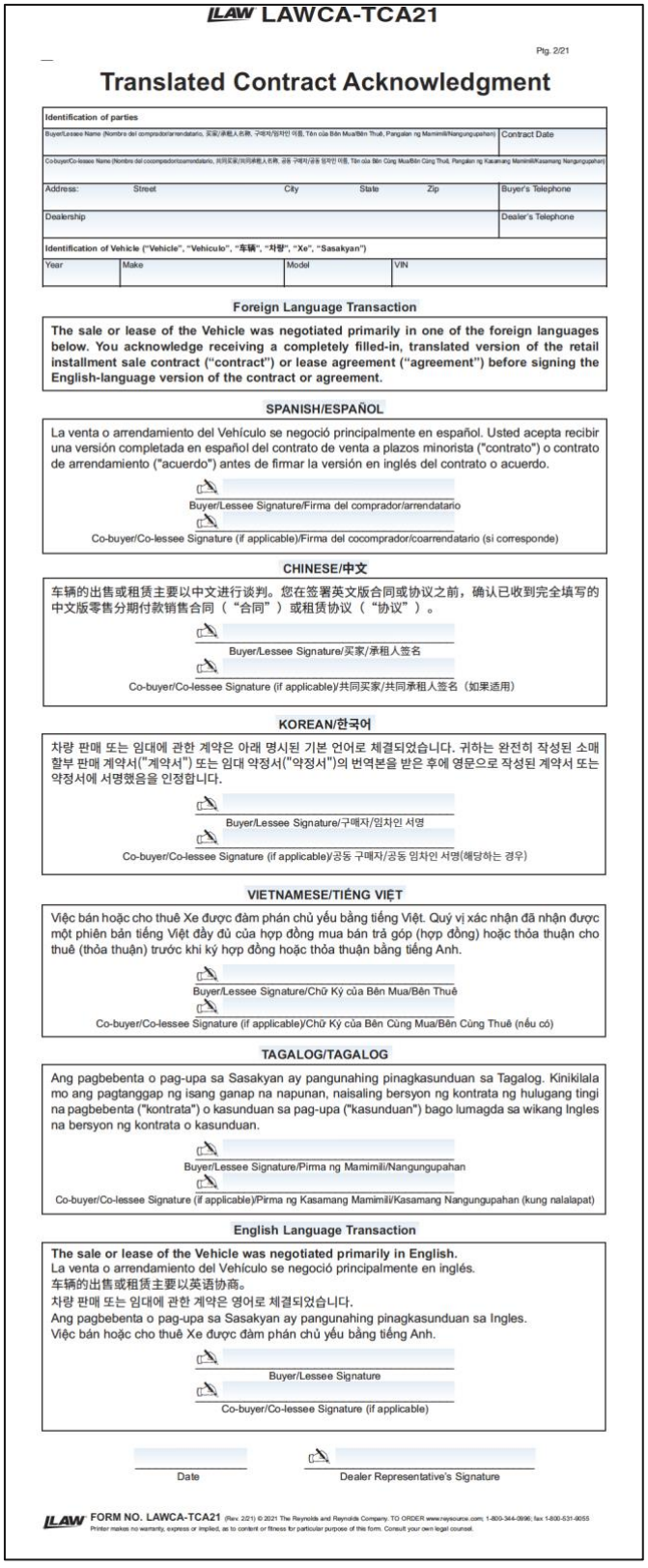
It is permissible, but not required, that the translation be signed by the customer. If the signature of the customer on the translation is obtained, it may act as an effective acknowledgement by the customer that he or she did receive a copy of the translation. Note that even if the translated copy is signed, the statute specifically states that the English language version of the contract is the controlling version.[5]

Customer's acknowledgment of receipt

The best practice to confirm a customer has received a translated contract or lease agreement is for dealership personnel to obtain a signed acknowledgement of receipt and retain a copy in the deal jacket. The Reynolds and Reynolds Foreign Language Acknowledgement Form (Form LAWCA-TCA) which follows is an example form that can be used for this purpose.

English-only acknowledgement

The example form includes an "English-only" acknowledgement statement at the bottom with a check box by which a customer can acknowledge that the transaction was negotiated solely in English. Using an English-only acknowledgement carries some risks. For example, if the form is used in every transaction, there is a risk that the "English-only" box will be checked in every case, with some dealership personnel mistakenly believing



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Translated Contract Acknowledgment

Identification of parties

Buyer/Lessee Name (Nombre del comprador/arrendatario, 买家/承租人名称, 구매자/임차인 이름, Tên của Bên Mua/Bên Thuê, Pangalan ng Mamimili/Nangungupahan) | Contract Date

Co-buyer/Co-lessee Name (Nombre del cocomprador/coarrendatario, 共同买家/共同承租人名称, 공동 구매자/공동 임차인 이름, Tên của Bên Cùng Mua/Bên Cùng Thuê, Pangalan ng Kasamang Mamimili/Kasamang Nangungupahan)

Address: Street | City | State | Zip | Buyer's Telephone

Dealership | Dealer's Telephone

Identification of Vehicle ("Vehicle", "Vehículo", "车辆", "차량", "Xe", "Sasakyan")

Year | Make | Model | VIN

Foreign Language Transaction

The sale or lease of the Vehicle was negotiated primarily in one of the foreign languages below. You acknowledge receiving a completely filled-in, translated version of the retail installment sale contract ("contract") or lease agreement ("agreement") before signing the English-language version of the contract or agreement.

SPANISH/ESPAÑOL

La venta o arrendamiento del Vehículo se negoció principalmente en español. Usted acepta recibir una versión completada en español del contrato de venta a plazos minorista ("contrato") o contrato de arrendamiento ("acuerdo") antes de firmar la versión en inglés del contrato o acuerdo.

Buyer/Lessee Signature/Firma del comprador/arrendatario

Co-buyer/Co-lessee Signature (if applicable)/Firma del cocomprador/coarrendatario (si corresponde)

CHINESE/中文

车辆的出售或租赁主要以中文进行谈判。您在签署英文版合同或协议之前，确认已收到完全填写的中文版零售分期付款销售合同（"合同"）或租赁协议（"协议"）。

Buyer/Lessee Signature/买家/承租人签名

Co-buyer/Co-lessee Signature (if applicable)/共同买家/共同承租人签名（如果适用）

KOREAN/한국어

차량 판매 또는 임대에 관한 계약은 아래 명시된 기본 언어로 체결되었습니다. 귀하는 완전히 작성된 소매 할부 판매 계약서("계약서") 또는 임대 약정서("약정서")의 번역본을 받은 후에 영문으로 작성된 계약서 또는 약정서에 서명했음을 인정합니다.

Buyer/Lessee Signature/구매자/임차인 서명

Co-buyer/Co-lessee Signature (if applicable)/공동 구매자/공동 임차인 서명(해당하는 경우)

VIETNAMESE/TIẾNG VIỆT

Việc bán hoặc cho thuê Xe được đàm phán chủ yếu bằng tiếng Việt. Quý vị xác nhận đã nhận được một phiên bản tiếng Việt đầy đủ của hợp đồng mua bán trả góp (hợp đồng) hoặc thỏa thuận cho thuê (thỏa thuận) trước khi ký hợp đồng hoặc thỏa thuận bằng tiếng Anh.

Buyer/Lessee Signature/Chữ Ký của Bên Mua/Bên Thuê

Co-buyer/Co-lessee Signature (if applicable)/Chữ Ký của Bên Cùng Mua/Bên Cùng Thuê (nếu có)

TAGALOG/TAGALOG

Ang pagbebenta o pag-upa sa Sasakyan ay pangunahing pinagkasunduan sa Tagalog. Kinikilala mo ang pagtanggap ng isang ganap na napunan, naisaling bersyon ng kontrata ng hulugang tingi na pagbebenta ("kontrata") o kasunduan sa pag-upa ("kasunduan") bago lumagda sa wikang Ingles na bersyon ng kontrata o kasunduan.

Buyer/Lessee Signature/Pirma ng Mamimili/Nangungupahan

Co-buyer/Co-lessee Signature (if applicable)/Pirma ng Kasamang Mamimili/Kasamang Nangungupahan (kung nalalapat)

English Language Transaction

The sale or lease of the Vehicle was negotiated primarily in English.
La venta o arrendamiento del Vehículo se negoció principalmente en inglés.
车辆的出售或租赁主要以英语协商。
차량 판매 또는 임대에 관한 계약은 영어로 체결되었습니다.
Ang pagbebenta o pag-upa sa Sasakyan ay pangunahing pinagkasunduan sa Ingles.
Việc bán hoặc cho thuê Xe được đàm phán chủ yếu bằng tiếng Anh.

Buyer/Lessee Signature

Co-buyer/Co-lessee Signature (if applicable)

Date | Dealer Representative's Signature

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[4] Civil Code § 1632(b)
[5] Civil Code § 1632(j)

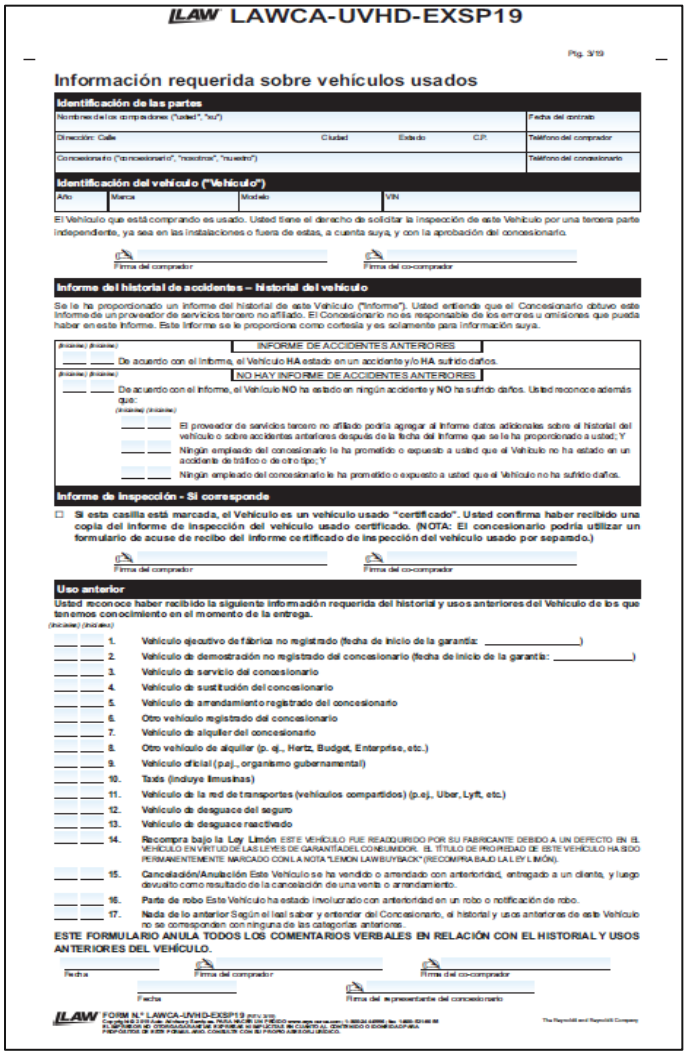
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that they can avoid providing a contract translation as long as they obtain a signature to the English-only statement. Additionally, as with the Reynolds and Reynolds Foreign Language Acknowledgment form (Form LAWCA_TCA21), it is important that the English-only acknowledgment be translated into each of the protected languages to combat against the argument that the customer did not understand what was being signed. The best compliance strategy for dealers is for the form to be used in *all* transactions - but to ensure that dealership personnel are properly trained to provide translated contracts when legally required.

Other documents required to be translated

In addition to providing a translated copy of the conditional sale contract or lease agreement, dealers are also required to provide a foreign-language translation of other documents that may make substantial changes in the rights and duties of the dealer and the customer, or that also come within (or very close) to the definition of a contract under the translation law.[6] Such documents include:

- Pre-contract disclosure statement (See Chapter 22)
- GAP documentation (See Chapter 19)
- Used vehicle contract cancellation option agreement (See Chapter 29)
- Notice of rescission given to the customer within 10 days if financing cannot be obtained (See Chapter 45)
- Co-signer notice (See Chapter 30)
- Any other notices or documents that purport to enforce or change rights or obligations under the contract



LAWCA-UVHD-EXSP19

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Información requerida sobre vehículos usados

Identificación de las partes

Nombres de los compradores ("usted", "su") | Fecha del contrato

Dirección: Calle | Ciudad | Estado | C.P. | Teléfono del comprador

Concesionario ("concesionario", "nosotros", "nuestro") | Teléfono del concesionario

Identificación del vehículo ("Vehículo")

Año | Marca | Modelo | VIN

El Vehículo que está comprando es usado. Usted tiene el derecho de solicitar la inspección de este Vehículo por una tercera parte independiente, ya sea en las instalaciones o fuera de estas, a cuenta suya, y con la aprobación del concesionario.

Firma del comprador | Firma del co-comprador

Informe del historial de accidentes – historial del vehículo

Se le ha proporcionado un informe del historial de este Vehículo ("Informe"). Usted entiende que el Concesionario obtuvo este informe de un proveedor de servicios tercero no afiliado. El Concesionario no es responsable de los errores u omisiones que pueda haber en este informe. Este informe se le proporciona como cortesía y es solamente para información suya.

(Iniciales) (Iniciales)

INFORME DE ACCIDENTES ANTERIORES

___ ___ De acuerdo con el informe, el Vehículo **HA** estado en un accidente y/o **HA** sufrido daños.

NO HAY INFORME DE ACCIDENTES ANTERIORES

___ ___ De acuerdo con el informe, el Vehículo **NO** ha estado en ningún accidente y **NO** ha sufrido daños. Usted reconoce además que:

(Iniciales) (Iniciales)

___ ___ El proveedor de servicios tercero no afiliado podría agregar al informe datos adicionales sobre el historial del vehículo o sobre accidentes anteriores después de la fecha del informe que se le ha proporcionado a usted; Y

___ ___ Ningún empleado del concesionario le ha prometido o expuesto a usted que el Vehículo no ha estado en un accidente de tráfico o de otro tipo; Y

___ ___ Ningún empleado del concesionario le ha prometido o expuesto a usted que el Vehículo no ha sufrido daños.

Informe de inspección - Si corresponde

☐ **Si esta casilla está marcada, el Vehículo es un vehículo usado "certificado". Usted confirma haber recibido una copia del informe de inspección del vehículo usado certificado. (NOTA: El concesionario podría utilizar un formulario de acuse de recibo del informe certificado de inspección del vehículo usado por separado.)**

Firma del comprador | Firma del co-comprador

Uso anterior

Usted reconoce haber recibido la siguiente información requerida del historial y usos anteriores del Vehículo de los que tenemos conocimiento en el momento de la entrega.

(Iniciales) (Iniciales)

___ ___ 1. Vehículo ejecutivo de fábrica no registrado (fecha de inicio de la garantía: _____)
___ ___ 2. Vehículo de demostración no registrado del concesionario (fecha de inicio de la garantía: _____)
___ ___ 3. Vehículo de servicio del concesionario
___ ___ 4. Vehículo de sustitución del concesionario
___ ___ 5. Vehículo de arrendamiento registrado del concesionario
___ ___ 6. Otro vehículo registrado del concesionario
___ ___ 7. Vehículo de alquiler del concesionario
___ ___ 8. Otro vehículo de alquiler (p. ej., Hertz, Budget, Enterprise, etc.)
___ ___ 9. Vehículo oficial (p.ej., organismo gubernamental)
___ ___ 10. Taxis (incluye limusinas)
___ ___ 11. Vehículo de la red de transportes (vehículos compartidos) (p.ej., Uber, Lyft, etc.)
___ ___ 12. Vehículo de desguace del seguro
___ ___ 13. Vehículo de desguace reactivado
___ ___ 14. **Recompra bajo la Ley Limón** ESTE VEHÍCULO FUE READQUIRIDO POR SU FABRICANTE DEBIDO A UN DEFECTO EN EL VEHÍCULO EN VIRTUD DE LAS LEYES DE GARANTÍA DEL CONSUMIDOR. EL TÍTULO DE PROPIEDAD DE ESTE VEHÍCULO HA SIDO PERMANENTEMENTE MARCADO CON LA NOTA "LEMON LAW BUYBACK" (RECOMPRA BAJO LA LEY LIMÓN).
___ ___ 15. Cancelación/Anulación Este Vehículo se ha vendido o arrendado con anterioridad, entregado a un cliente, y luego devuelto como resultado de la cancelación de una venta o arrendamiento.
___ ___ 16. Parte de robo Este Vehículo ha estado involucrado con anterioridad en un robo o notificación de robo.
___ ___ 17. Nada de lo anterior Según el leal saber y entender del Concesionario, el historial y usos anteriores de este Vehículo no se corresponden con ninguna de las categorías anteriores.

ESTE FORMULARIO ANULA TODOS LOS COMENTARIOS VERBALES EN RELACIÓN CON EL HISTORIAL Y USOS ANTERIORES DEL VEHÍCULO.

Fecha | Firma del comprador | Firma del co-comprador

Fecha | Firma del representante del concesionario

LAW FORM N.º LAWCA-UVHD-EXSP19 (REV. 3/19)

In addition, the Used Car Buyers Guide must be translated into Spanish when the vehicle sale is conducted in Spanish. (See discussion of Used Car Buyers Guide in Chapter 21.)

Finally, if dealers make written disclosures on used vehicles such as the Reynolds LAWCA-UVHD-EX19 Used Vehicle Disclosure form, the best practice is to provide a translated copy of the disclosures as well. One such example is the use of the LAWCA-UVHD-EXSP19 form shown here.

[6] Reyes v. Superior Court (1981) 118 Cal. App. 3d 159

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Notice to financial institution

In the event of a subsequent repossession, the financial institution to which a dealer assigned the contract or lease agreement is required to give its repossession notice to the customer both in English and in the specified foreign language. However, a financial institution that is not notified by the dealer that a foreign language translation was provided may inadvertently violate the law by failing to provide a translation of the repossession notice. If this occurs, the dealer may be required to repurchase the contract or pay off any resulting deficiency to the financial institution. Accordingly, a dealer should notify the financial institution in writing in all instances that a foreign language translation was given to the customer, and be sure to identify the actual language used.

Translation not required if customer has interpreter

If the sale or lease agreement is negotiated primarily in one of the specified languages through the customer's own interpreter (who is not a minor, does not work for the dealership, and can speak and read fluently both English and the specified foreign language), then no translated contract need be given to the customer.[7] However, obtaining and retaining verified proof of the interpreter's fluency in both languages can be quite difficult, if not impossible. Therefore, dealers should consider adopting a compliance strategy of providing the translated version of the contract even if the customer uses his or her own interpreter.

Required sign posting

The law also requires dealers to conspicuously post signs (in any applicable foreign language) notifying consumers about the contract translation requirements.[8] (See Chapter 54 for an illustration of this sign.)

[7] Civil Code § 1632(h)
[8] Civil Code § 1632(f)

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CHAPTER 32: CONDITION/HISTORY DISCLOSURES

This chapter discusses legal issues related to vehicle condition or history disclosures that should be provided when selling a new or used vehicle to a consumer.

Legal background

California law requires dealers to provide customers with a written disclosure of repaired damage to new (or never-registered) vehicles if the repair costs exceed an amount set by statutory formula[1]. A damage amount above the threshold calculation is defined to be "material." Dealers are also required to provide a written disclosure of *any* unrepaired damage to a new (or never-registered) vehicle.

Because this statutory definition of "material" damage does not apply to *used* vehicles, dealers must make a judgment call as to when to disclose damage regarding a used vehicle to a customer. This decision often depends on the nature and extent of the damage involved.

Additionally, dealers are prohibited from selling as "certified" any used vehicle having prior damage of a certain type (for example, frame damage or impact, fire or flood damage, or damage that impairs the use or safety of the vehicle).[2]

Dealers must, prior to displaying or offering a used vehicle for retail sale, obtain a National Motor Vehicle Title Information System (NMVTIS) vehicle history report from a NMVTIS data provider regarding the used vehicle.[3] If the report indicates the vehicle has a branded title or shows the vehicle at some time had been reported as a junk or salvage vehicle, the dealer must post a red warning label in close proximity to the FTC Buyers Guide before offering the vehicle for sale or lease. [4]

California law also requires dealers to make disclosures to potential buyers about used vehicles having a certain status (for example, insurance salvage) or prior use (for example, rental vehicle, taxicab).[5]

Cardinal rule concerning vehicle condition and history

Under all circumstances, dealership personnel must respond to any inquiry by a buyer regarding the condition of a new or used vehicle (including those relating to prior damage or involvement in an accident) in a manner that is truthful and not misleading.[6]

[1] Vehicle Code §§ 9990 - 9993
[2] Vehicle Code § 11713.18(a)(4) and (5)
[3] Vehicle Code § 11713.26
[4] Vehicle Code § 11713.26(b)
[5] Vehicle Code § 11713(t); 13 CCR § 260.02
[6] 13 CCR § 260.03

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New Vehicles

The legal requirement for a dealer to make a written disclosure to the buyer regarding damage sustained by a new or previously unregistered vehicle prior to its sale or lease applies if the damage is "material." By law, damage is considered "material" if any of the following circumstances exist:[7]

- **Frame or Drive Train Damage**: Any damage that occurred to the frame or drive train of the vehicle must be disclosed.
- **Theft Damage**: Any damage that occurred to the vehicle in connection with the theft of the entire vehicle must be disclosed. This disclosure requirement does not apply in circumstances where only a portion (e.g., rims) of the vehicle was stolen.
- **Suspension Damage**: If the vehicle sustained damage to the suspension system requiring repairs "other than wheel balancing or alignment," the damage is considered material and must be disclosed.
- **The "Catch All" Formula**: If a new or previously unregistered vehicle has sustained damage other than that described in the previous three categories, the dealer must perform a complicated calculation to determine whether the damage was "material"—defined as damage that costs more than $500 or 3% of MSRP (whichever is greater) to repair, but excludes certain repair costs. Once the dealer has a detailed breakdown of the costs to repair the vehicle (calculated at repairer's cost), the calculation can begin.

  Step One: Calculate 10% of the vehicle's MSRP. Regardless of circumstance, if the cost to repair the vehicle exceeds 10% of the MSRP, the damage is considered "material" and must be disclosed.

  Step Two: Calculate 3% of the vehicle's MSRP. If the cost to repair the vehicle (at repairer's cost) is below 3% of MSRP or $500 (whichever is greater), the damage is *not* considered "material," and disclosure of the damage is *not* required by law.

  Step Three: The calculation becomes more complicated if the cost of repairs exceeds 3% of MSRP (or $500, whichever is greater), but is less than 10% of MSRP, because the law allows for some repair costs to be excluded from the calculation.

  Exclusions: While dealers must always include all repainting and refinishing costs in the calculation, costs for replacing damaged or stolen components are *not* counted toward the 3% disclosure threshold if replaced by installation of new OEM parts or accessories that are bolted or otherwise attached as a unit to the vehicle, such as the hood, bumpers, fenders, mechanical parts, instrument panels, moldings, glass, tires, wheels, and electronic instruments. As covered in Step One, described above, if the total amount of repairs (including OEM parts and accessories) exceeds 10% of MSRP, the damage must be disclosed.

[7] Vehicle Code § 9990

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Example: If a vehicle has an MSRP of $30,000, and the total repair cost is less than $900, the damage is not considered "material" and does not need to be disclosed. If the repair cost exceeds $3,000, the damage is considered "material" and must be disclosed. If repairs cost $1,200, but include a $600 OEM replacement bumper, the repair cost attributable to the formula would be $600, which would not be considered "material" and not subject to the written damage disclosure requirements.

ERR ON THE SIDE OF CAUTION: A number of dealers have been sued or faced DMV enforcement action for failing to disclose damage. The DMV and trial lawyers will attempt to skew repair costs in favor of the consumer (e.g., by including overhead or labor expenses in calculating costs to repair). Dealers should exercise caution when deciding whether to disclose damage that approaches the "material damage" threshold.

DEALER TIP: ATTACH SUPPORTING DOCUMENTATION

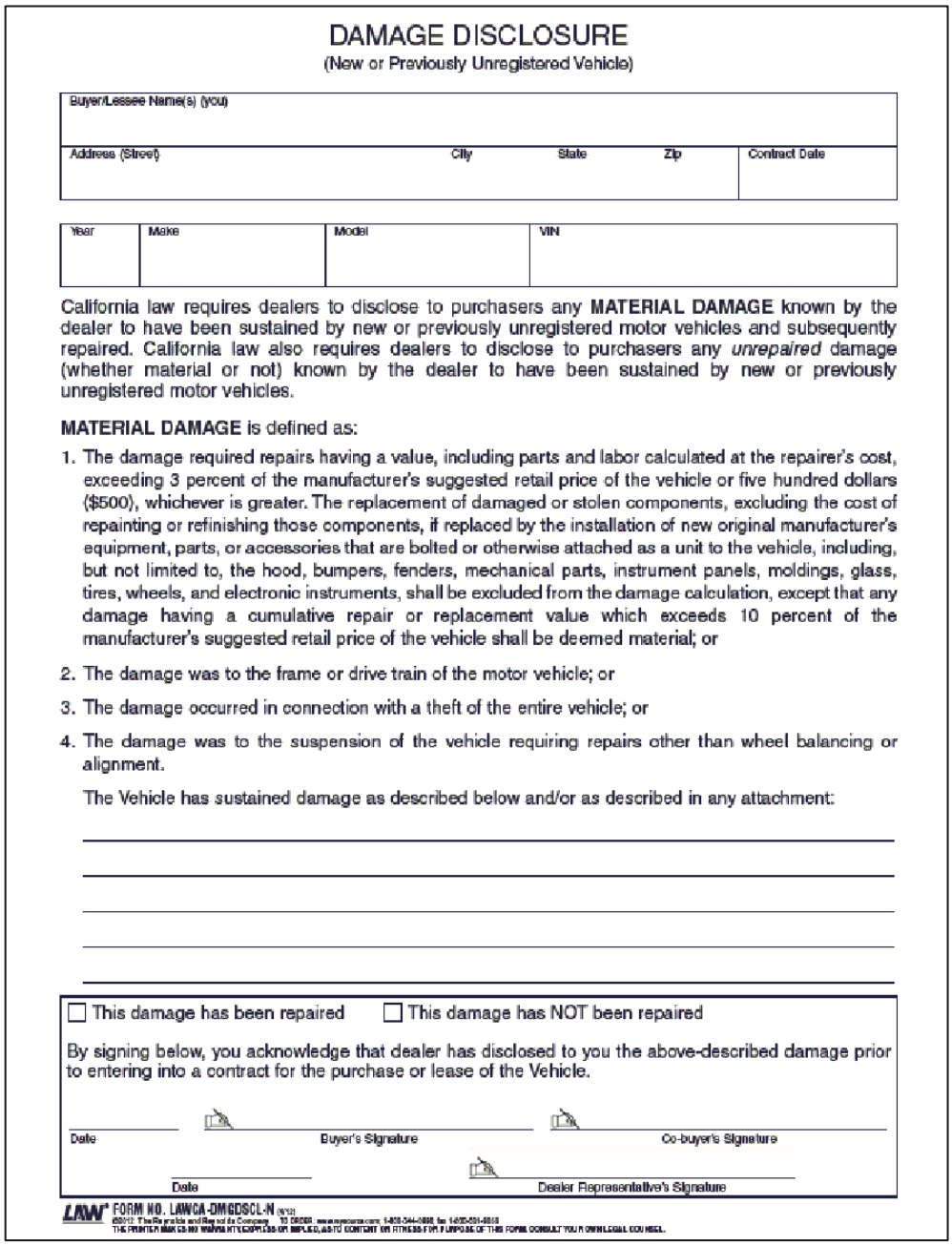
When disclosing that a new vehicle has incurred damage, dealership personnel should consider attaching repair documentation such as invoices. While not required by statute, making this disclosure could prevent claims that the description of the damage was inaccurate or misleading.

Making the new vehicle damage disclosure

Dealers can comply with the written damage disclosure requirement relating to new vehicles by using the Reynolds and Reynolds Damage Disclosure Form (Form LAWCA-DMGDSCL-N) which follows. A detailed description of the nature and extent of the damage should be included—merely disclosing repair costs or describing a damaged part (e.g., "bumper") will not satisfy disclosure requirements.

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Example Form



DAMAGE DISCLOSURE

(New or Previously Unregistered Vehicle)

Buyer/Lessee Name(s) (you)				
Address (Street)	City	State	Zip	Contract Date

Year	Make	Model	VIN

California law requires dealers to disclose to purchasers any **MATERIAL DAMAGE** known by the dealer to have been sustained by new or previously unregistered motor vehicles and subsequently repaired. California law also requires dealers to disclose to purchasers any *unrepaired* damage (whether material or not) known by the dealer to have been sustained by new or previously unregistered motor vehicles.

MATERIAL DAMAGE is defined as:

1. The damage required repairs having a value, including parts and labor calculated at the repairer's cost, exceeding 3 percent of the manufacturer's suggested retail price of the vehicle or five hundred dollars ($500), whichever is greater. The replacement of damaged or stolen components, excluding the cost of repainting or refinishing those components, if replaced by the installation of new original manufacturer's equipment, parts, or accessories that are bolted or otherwise attached as a unit to the vehicle, including, but not limited to, the hood, bumpers, fenders, mechanical parts, instrument panels, moldings, glass, tires, wheels, and electronic instruments, shall be excluded from the damage calculation, except that any damage having a cumulative repair or replacement value which exceeds 10 percent of the manufacturer's suggested retail price of the vehicle shall be deemed material; or
2. The damage was to the frame or drive train of the motor vehicle; or
3. The damage occurred in connection with a theft of the entire vehicle; or
4. The damage was to the suspension of the vehicle requiring repairs other than wheel balancing or alignment.

The Vehicle has sustained damage as described below and/or as described in any attachment:

_____

_____

_____

_____

_____

☐ This damage has been repaired ☐ This damage has NOT been repaired

By signing below, you acknowledge that dealer has disclosed to you the above-described damage prior to entering into a contract for the purchase or lease of the Vehicle.

Date _____ Buyer's Signature _____ Co-buyer's Signature _____

Date _____ Dealer Representative's Signature _____

LAW FORM NO. LAWCA-DMGDSCL-N (9/12)

False statements actionable regardless of threshold

Although the materiality test of the applicable Vehicle Code sections dictates when a dealer must disclose a new vehicle's prior damage, a dealer is not insulated by these statutes from fraud, false advertising, or other claims arising from any false or inaccurate affirmative statements made by dealership personnel about a new vehicle's condition. For example, if dealership personnel falsely respond "no" when directly asked whether a vehicle has sustained damage, the dealership could face legal action even if the value of the damage was below the statutory threshold amount.

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Used vehicles in general

Certified used vehicles

California's Car Buyer's Bill of Rights prohibits a dealer from advertising or selling a vehicle as "certified" if (1) the dealer knows or should have known that the vehicle has sustained frame damages, or (2) the vehicle has sustained damage in an impact, fire, or flood, that substantially impairs the use or safety of the vehicle even after it has been repaired.[8] (See Chapter 34 for a discussion of certified used vehicles.)

Used vehicle damage disclosure

There is no California law which specifically defines "material" damage related to used vehicles, or states when a dealer selling a used vehicle must disclose prior damage. However, California law does prohibit misrepresentation and fraud, and so dealership personnel must consider very carefully the nature of any damage sustained by a used vehicle, and make a disclosure of that damage when it is prudent to do so. Prior damage to a used vehicle should be evaluated in terms of its impact on the value, operation or safety of the vehicle. If any of these factors are significantly impacted, the prior damage should be disclosed to the buyer. Because this is a subjective evaluation, dealers should take a conservative approach and "over-disclose" damage, as doing so provides the best protection against claims of misrepresentation or fraud.

DEALER TIP: INCLUDE REASONABLE DESCRIPTION

When using a disclosure form, dealership personnel should include a reasonable description of the damage involved. It is not enough to merely say that the vehicle sustained over $500 in damage.

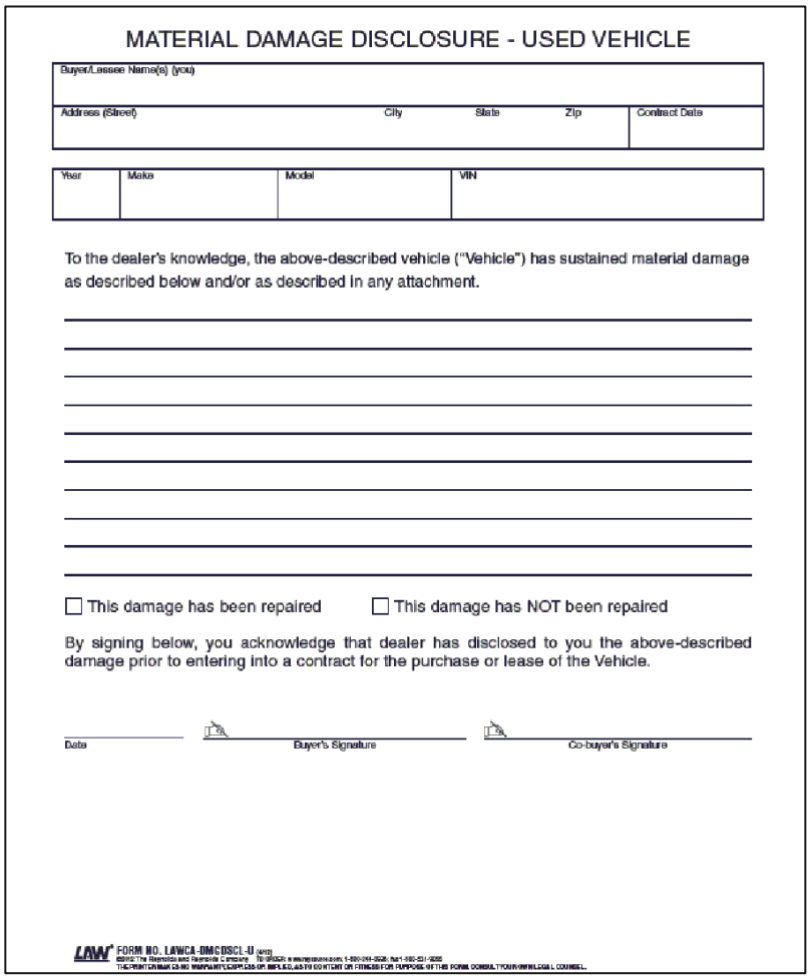
Making the Used Vehicle Damage Disclosure

The Reynolds and Reynolds Material Damage Disclosure-Used Vehicle Form (Form LAWCA-DMGDSCL-U) which follows can be used by a dealer to make the written disclosure of damage to a used vehicle. A detailed description of the damage should be included in completing the form as well as an indication as to whether the damage has been repaired. If a dealer has accurate information concerning the cost incurred in repairing damage to a used vehicle, the dealer should consider disclosing that dollar amount to prevent claims that the non-monetary description of the damage was inaccurate or misleading.

[8] Vehicle Code § 11713.18(a)(4) and (5)

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Example form



MATERIAL DAMAGE DISCLOSURE - USED VEHICLE

Buyer/Lessee Name(s) (you)

Address (Street) City State Zip Contract Date

Year Make Model VIN

To the dealer's knowledge, the above-described vehicle ("Vehicle") has sustained material damage as described below and/or as described in any attachment.

☐ This damage has been repaired ☐ This damage has NOT been repaired

By signing below, you acknowledge that dealer has disclosed to you the above-described damage prior to entering into a contract for the purchase or lease of the Vehicle.

Date Buyer's Signature Co-buyer's Signature

LAW FORM NO. LAWCA-DMGDISCL-U

NMVTIS history report requirement

The NMVTIS is a federally-mandated database of title information overseen by the U.S. Department of Justice, to which all state DMVs, insurance companies, junk yards, salvage yards, and towing facilities must report vehicle title information. California law requires that dealers obtain a NMVTIS vehicle history report from a NMVTIS data provider on the VIN of a used vehicle prior to displaying or offering the vehicle for retail sale.[9] If the NMVTIS history report shows no record of the vehicle, or does not indicate the vehicle has been designated or reported as a junk or salvage vehicle, the dealer has no further duty regarding this law. However, if the report indicates the vehicle's title has been branded or the vehicle has been designated or reported as a junk or salvage automobile, the dealer must post a 4 inch by 5.5 inch red label with the statutorily required language in at least 14-point bold black type (the "warning" heading must be at least 18-point black type) in close proximity to the FTC Buyers Guide before the vehicle is offered for sale (see required warning label language below).[10] If a dealer

[9] Vehicle Code § 11713.26
[10] Vehicle Code § 11713.26(b)

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is required to post this label, the dealer must also provide the buyer of the vehicle with the NMVTIS history report prior to sale upon request.[11]

Dealers should note that a NMVTIS history report may contain title information that triggers additional requirements under other laws. For instance, if a NMVTIS history report shows that the vehicle was declared a salvage vehicle by an insurance company, this will trigger a dealer's duty to disclose this status to the buyer, as described below. If the NMVTIS history report shows that the vehicle's title has been branded as a "Lemon Law Buyback" the disclosure requirements described in Chapter 33 will be triggered.

Required warning label language

WARNING:

According to a vehicle history report issued by the National Motor Vehicle Title Information System (NMVTIS), this vehicle has been reported as a total-loss vehicle by an insurance company, has been reported into NMVTIS by a junk or salvage reporting entity, or has a title brand which may materially affect the value, safety, and/or condition of the vehicle. Because of its history as a junk, salvage, or title-branded vehicle, the manufacturer's warranty or service contract on this vehicle may be affected. Ask the dealer to see a copy of the NMVTIS vehicle history report. You may independently obtain the report by checking NMVTIS online at www.vehiclehistory.gov.

Prior history disclosure

California law requires a dealer to disclose to a buyer a used vehicle's prior history, if known by the dealer, as a taxicab, rental vehicle, publicly owned vehicle, insurance salvaged vehicle, revived salvaged vehicle, or lemon law buy back.[12] California law also prohibits dealers from advertising for sale a vehicle previously used by the dealer as a demonstrator, service vehicle, rental, loaner, or lease vehicle, unless that previous use is clearly and conspicuously disclosed in the advertisement.[13] Dealers should be aware that a vehicle's status as an insurance salvaged, revived salvage or lemon law buyback will show up in a NMVTIS history report—meaning that the warning label requirements described earlier in this chapter will apply.

Third party vehicle condition/history reports

As discussed above, dealers are required by law to obtain a NMVTIS history report before offering a used vehicle for sale. Although not required by law, some dealers contract with third party commercial providers for market condition and history reports. Such reports may be used internally by the dealer to find repair or use history to assist in valuation and fulfilling disclosure requirements, and may also be furnished to customers. Dealers providing commercial history reports to customers should explain that these reports are prepared by a third

[11] Vehicle Code § 11713.26(b)(2)
[12] 13 CCR § 260.02
[13] Vehicle Code § 11713(t) and (u); Civil Code § 1793.23

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party and not the dealer. Dealers should advise customers to thoroughly read any such reports before purchasing a vehicle and should particularly highlight the disclaimer provisions contained in the report. Some vehicle history reports include acknowledgements for customers to sign. Dealers should consider having legal counsel approve the content of any such acknowledgements.

The LAWCA-UVHD-EX19 form, shown below, includes a section in the middle titles "Accident History – Vehicle History Report" in which the customer(s) acknowledge(s) receipt of a vehicle history report from the dealer, and that the vehicle report provided by the dealer comes from a third party, and that the dealer is not responsible for any errors or omissions in the report. This section also has the customer acknowledge whether the report indicates any prior accident or damage. If the report shows no prior accident or damage, the form provides for the customer(s) to acknowledge the following key points:

- Additional vehicle history and/or prior accident information may be subsequently added to the report by the provider;
- No dealership employee promised or represented that the vehicle has not been in an accident or that the vehicle has not sustained damage.

These two points are powerful tools to help dealers to defend against consumer claims of promises or oral misrepresentations made prior to sale. Dealers should ensure that the form is being completed properly in order to obtain its full benefits.

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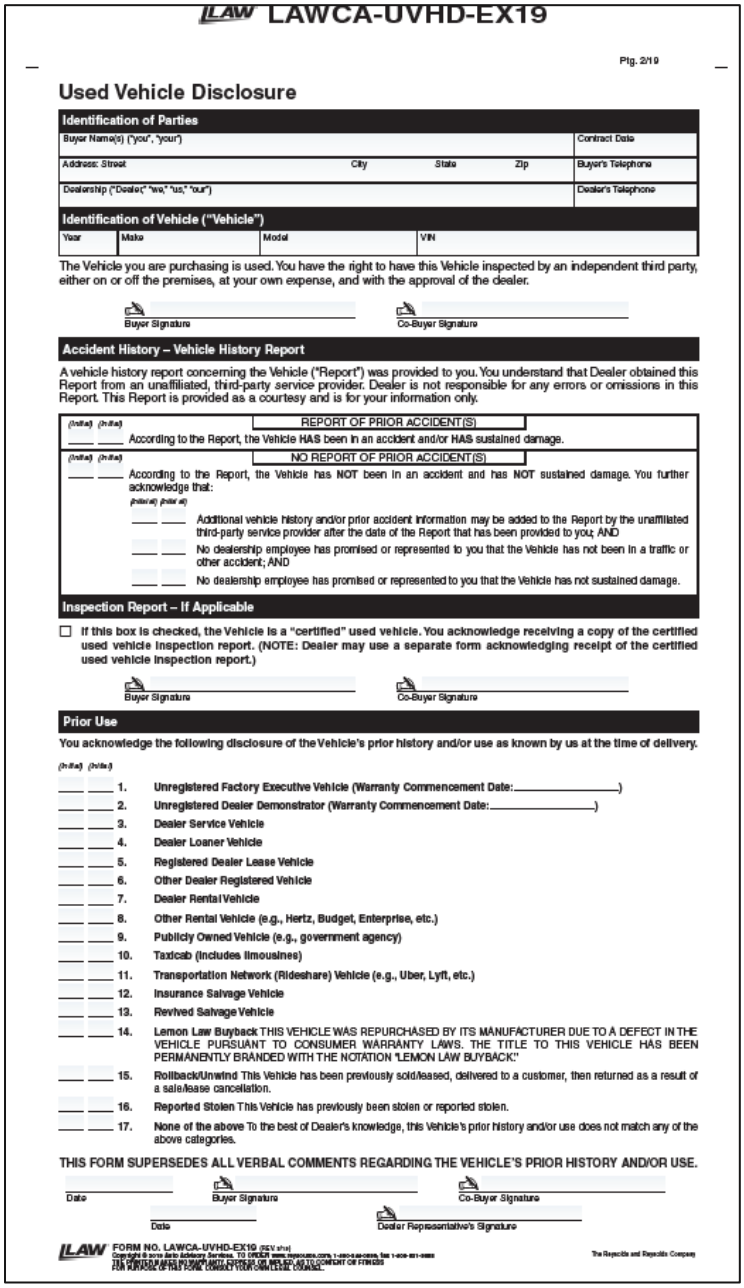
Example form

The Reynolds and Reynolds Used Vehicle Disclosure Form (Form LAWCA-UVHD-EX19) shown here may be used to confirm disclosures made by a dealer to a buyer regarding a used vehicle's prior history.

Timing of damage and history disclosures

The required disclosures concerning a used vehicle's prior use or status should be made by dealership personnel to the buyer in writing before the contract is signed. The written disclosure should be signed by the buyer and given to the buyer, and a copy of the signed form should be retained by the dealer as part of the deal jacket.

If a dealer provides a commercial vehicle history report to the buyer, a copy of that report should also be retained by the dealer as part of the deal jacket.



LAW LAWCA-UVHD-EX19

Pg. 2/19

Used Vehicle Disclosure

Identification of Parties

Buyer Name(s) ("you", "your")				Contract Date
Address: Street	City	State	Zip	Buyer's Telephone
Dealership ("Dealer," "we," "us," "our")				Dealer's Telephone

Identification of Vehicle ("Vehicle")

Year	Make	Model	VIN

The Vehicle you are purchasing is used. You have the right to have this Vehicle inspected by an independent third party, either on or off the premises, at your own expense, and with the approval of the dealer.

Buyer Signature Co-Buyer Signature

Accident History – Vehicle History Report

A vehicle history report concerning the Vehicle ("Report") was provided to you. You understand that Dealer obtained this Report from an unaffiliated, third-party service provider. Dealer is not responsible for any errors or omissions in this Report. This Report is provided as a courtesy and is for your information only.

(Initial) (Initial) REPORT OF PRIOR ACCIDENT(S)

___ ___ According to the Report, the Vehicle HAS been in an accident and/or HAS sustained damage.

(Initial) (Initial) NO REPORT OF PRIOR ACCIDENT(S)

___ ___ According to the Report, the Vehicle has NOT been in an accident and has NOT sustained damage. You further acknowledge that:

(Initial) (Initial)

___ ___ Additional vehicle history and/or prior accident information may be added to the Report by the unaffiliated third-party service provider after the date of the Report that has been provided to you; AND

___ ___ No dealership employee has promised or represented to you that the Vehicle has not been in a traffic or other accident; AND

___ ___ No dealership employee has promised or represented to you that the Vehicle has not sustained damage.

Inspection Report – If Applicable

☐ **If this box is checked, the Vehicle is a "certified" used vehicle. You acknowledge receiving a copy of the certified used vehicle inspection report. (NOTE: Dealer may use a separate form acknowledging receipt of the certified used vehicle inspection report.)**

Buyer Signature Co-Buyer Signature

Prior Use

You acknowledge the following disclosure of the Vehicle's prior history and/or use as known by us at the time of delivery.

(Initial) (Initial)

___ ___ 1. **Unregistered Factory Executive Vehicle (Warranty Commencement Date:_____)**

___ ___ 2. **Unregistered Dealer Demonstrator (Warranty Commencement Date:_____)**

___ ___ 3. **Dealer Service Vehicle**

___ ___ 4. **Dealer Loaner Vehicle**

___ ___ 5. **Registered Dealer Lease Vehicle**

___ ___ 6. **Other Dealer Registered Vehicle**

___ ___ 7. **Dealer Rental Vehicle**

___ ___ 8. **Other Rental Vehicle (e.g., Hertz, Budget, Enterprise, etc.)**

___ ___ 9. **Publicly Owned Vehicle (e.g., government agency)**

___ ___ 10. **Taxicab (includes limousines)**

___ ___ 11. **Transportation Network (Rideshare) Vehicle (e.g., Uber, Lyft, etc.)**

___ ___ 12. **Insurance Salvage Vehicle**

___ ___ 13. **Revived Salvage Vehicle**

___ ___ 14. **Lemon Law Buyback** THIS VEHICLE WAS REPURCHASED BY ITS MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS. THE TITLE TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED WITH THE NOTATION "LEMON LAW BUYBACK."

___ ___ 15. **Rollback/Unwind** This Vehicle has been previously sold/leased, delivered to a customer, then returned as a result of a sale/lease cancellation.

___ ___ 16. **Reported Stolen** This Vehicle has previously been stolen or reported stolen.

___ ___ 17. **None of the above** To the best of Dealer's knowledge, this Vehicle's prior history and/or use does not match any of the above categories.

THIS FORM SUPERSEDES ALL VERBAL COMMENTS REGARDING THE VEHICLE'S PRIOR HISTORY AND/OR USE.

Date Buyer Signature Co-Buyer Signature

Date Dealer Representative's Signature

LAW FORM NO. LAWCA-UVHD-EX19 (REV. 2/19)

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CHAPTER 33: LEMON LAW DISCLOSURES

This chapter discusses both the manufacturer's and dealer's notification duties to a retail purchaser or lessee of a vehicle which was reacquired by the manufacturer in response to a request or demand by the previous owner.

Legal background

California law imposes a duty on any manufacturer that reacquires or assists a dealer or lienholder to reacquire a vehicle in response to a request by the original owner that the vehicle be replaced (regardless of whether the vehicle meets the legal test of a "lemon") to prepare, sign and deliver to the dealer a statutory "Warranty Buyback Notice."[1] This notice, which must describe the vehicle's prior problems and any repairs made, must be given by the dealer to the subsequent purchaser of the vehicle.[2] The manufacturer must also cause the vehicle to be retitled in the manufacturer's name and the title branded with the inscription "Lemon Law Buyback."[3] Additionally, the manufacturer is required to affix a decal to the left front doorframe of the vehicle specifying that the title has been branded.[4] The law prohibits any person from knowingly removing or altering this decal.[5]

Dealer duties upon receiving factory warranty buyback notice

California law places a burden on dealers who know (or should know) that the vehicle they are selling or leasing was reacquired by the manufacturer in response to a replacement request by the previous owner.[6] In such circumstances, the dealer was generally involved in assisting the customer through the manufacturer reacquisition process, and in any event, the dealer should have received a signed Warranty Buyback Notice from the manufacturer. Prior to selling or leasing such a vehicle to a subsequent customer, this notice should also be signed by both the dealer and the customer and delivered to the customer.[7] A copy of the fully signed form should be retained in the deal jacket.

Some factories require the first post buy-back dealer to assist in placing decals on the door frame and causing the vehicle's title to be branded with a lemon law buyback warning and to take additional steps to comply with the lemon law notice laws. If applicable, a dealer should be sure to follow these requirements as well.

Dealer trades

If a dealer sells such a vehicle to another dealer instead of a retail purchaser or lessee, the selling dealer must still sign and deliver the Warranty Buyback Notice to the purchasing dealer, who in turn must sign and deliver the Warranty Buyback Notice to that dealer's customer who subsequently purchases or leases the vehicle.[8]

[1] Civil Code §§ 1793.23 and 1793.24
[2] Civil Code § 1793.23(e)
[3] Civil Code § 1793.23(f)
[4] Civil Code § 1793.23(c); Vehicle Code § 11713.12(a)
[5] Vehicle Code § 11713.12(b)
[6] Civil Code § 1793.23(e)
[7] Civil Code § 1793.23(e)
[8] Civil Code § 1793.23(e)

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Dealer duties upon receiving known or suspected "lemon law buyback"

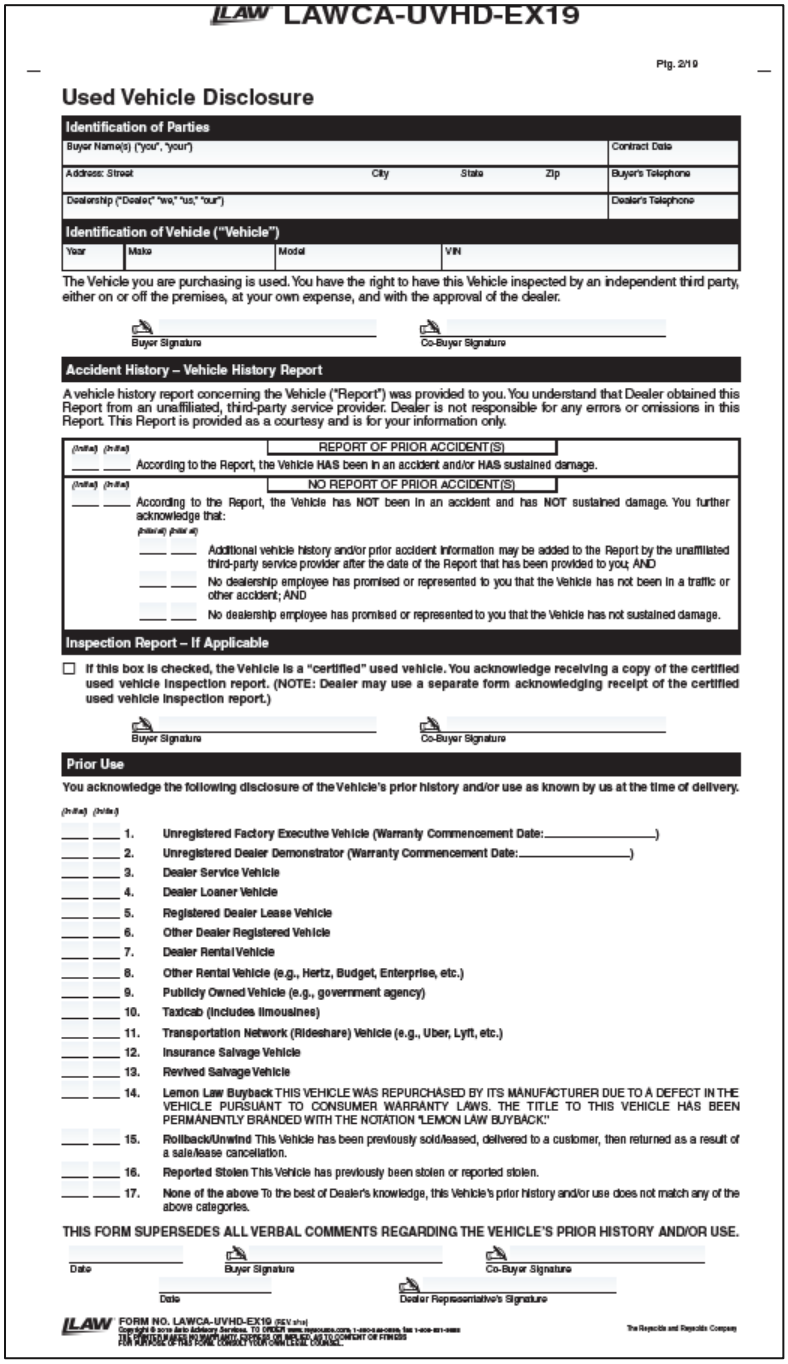
If a dealer obtains a used vehicle by way of trade-in, or from the auto auction, and that vehicle has been title branded with the inscription "Lemon Law Buyback," the dealer is required under the statute to furnish the dealer's purchase or lease customer with a separate, signed Disclosure Statement, providing as follows:[9]

THIS VEHICLE WAS REPURCHASED BY ITS MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS. THE TITLE TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED WITH THE NOTATION "LEMON LAW BUYBACK."

This Disclosure Statement should be given to the purchase or lease customer prior to execution of the contract or lease.[10] The Reynolds and Reynolds Used Vehicle Disclosure Form (Form LAWCA-UVHD-EX19) can be used for this purpose.

Lemon law buyback" title brand triggers "red sticker posting" requirement

As described in Chapter 32, dealers must post a specific red label near the Used Car Buyers Guide if a NMVTIS vehicle history report shows that the vehicle's title has been branded. Since California law requires that the title to lemon law buyback vehicles be branded, this status will trigger the requirements discussed in Chapter 32.



LAW LAWCA-UVHD-EX19

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Used Vehicle Disclosure

Identification of Parties

Buyer Name(s) ("you", "your")				Contract Date
Address: Street	City	State	Zip	Buyer's Telephone
Dealership ("Dealer," "we," "us," "our")				Dealer's Telephone

Identification of Vehicle ("Vehicle")

Year	Make	Model	VIN

The Vehicle you are purchasing is used. You have the right to have this Vehicle inspected by an independent third party, either on or off the premises, at your own expense, and with the approval of the dealer.

Buyer Signature Co-Buyer Signature

Accident History – Vehicle History Report

A vehicle history report concerning the Vehicle ("Report") was provided to you. You understand that Dealer obtained this Report from an unaffiliated, third-party service provider. Dealer is not responsible for any errors or omissions in this Report. This Report is provided as a courtesy and is for your information only.

(Initial) (Initial) REPORT OF PRIOR ACCIDENT(S)

___ ___ According to the Report, the Vehicle HAS been in an accident and/or HAS sustained damage.

(Initial) (Initial) NO REPORT OF PRIOR ACCIDENT(S)

___ ___ According to the Report, the Vehicle has NOT been in an accident and has NOT sustained damage. You further acknowledge that:

(Initial) (Initial)

___ ___ Additional vehicle history and/or prior accident information may be added to the Report by the unaffiliated third-party service provider after the date of the Report that has been provided to you; AND

___ ___ No dealership employee has promised or represented to you that the Vehicle has not been in a traffic or other accident; AND

___ ___ No dealership employee has promised or represented to you that the Vehicle has not sustained damage.

Inspection Report – If Applicable

☐ If this box is checked, the Vehicle is a "certified" used vehicle. You acknowledge receiving a copy of the certified used vehicle inspection report. (NOTE: Dealer may use a separate form acknowledging receipt of the certified used vehicle inspection report.)

Buyer Signature Co-Buyer Signature

Prior Use

You acknowledge the following disclosure of the Vehicle's prior history and/or use as known by us at the time of delivery.

(Initial) (Initial)

___ ___ 1. Unregistered Factory Executive Vehicle (Warranty Commencement Date:_____)
___ ___ 2. Unregistered Dealer Demonstrator (Warranty Commencement Date:_____)
___ ___ 3. Dealer Service Vehicle
___ ___ 4. Dealer Loaner Vehicle
___ ___ 5. Registered Dealer Lease Vehicle
___ ___ 6. Other Dealer Registered Vehicle
___ ___ 7. Dealer Rental Vehicle
___ ___ 8. Other Rental Vehicle (e.g., Hertz, Budget, Enterprise, etc.)
___ ___ 9. Publicly Owned Vehicle (e.g., government agency)
___ ___ 10. Taxicab (includes limousines)
___ ___ 11. Transportation Network (Rideshare) Vehicle (e.g., Uber, Lyft, etc.)
___ ___ 12. Insurance Salvage Vehicle
___ ___ 13. Revived Salvage Vehicle
___ ___ 14. Lemon Law Buyback THIS VEHICLE WAS REPURCHASED BY ITS MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS. THE TITLE TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED WITH THE NOTATION "LEMON LAW BUYBACK."
___ ___ 15. Rollback/Unwind This Vehicle has been previously sold/leased, delivered to a customer, then returned as a result of a sale/lease cancellation.
___ ___ 16. Reported Stolen This Vehicle has previously been stolen or reported stolen.
___ ___ 17. None of the above To the best of Dealer's knowledge, this Vehicle's prior history and/or use does not match any of the above categories.

THIS FORM SUPERSEDES ALL VERBAL COMMENTS REGARDING THE VEHICLE'S PRIOR HISTORY AND/OR USE.

Date Buyer Signature Co-Buyer Signature

Date Dealer Representative's Signature

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[9] Civil Code § 1793.23(f)
[10] Civil Code § 1793.23(f)

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CHAPTER 34: CERTIFIED USED VEHICLE DOCUMENTATION

This chapter discusses F&I compliance regarding certified used vehicles.

Legal background

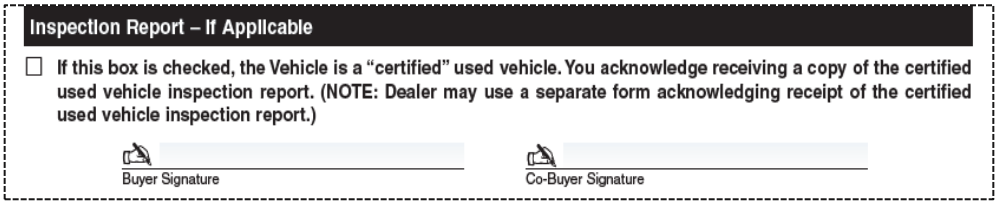
California's Car Buyer's Bill of Rights imposes a host of requirements applicable to the advertising and sale of a used vehicle using the term "certified" (or similar term) that implies the vehicle has been certified to meet the terms of a used vehicle certification program of any kind.[1] The statute applies to manufacturer, dealer, and third-party certification programs.

DEALER TIP: INSPECTION REPORT KEY

It is critical that dealership personnel make sure that an accurate and complete vehicle inspection report be delivered to the buyer prior to the sale contract being signed. A failure to comply with this requirement exposes the dealer to legal action that can result in the transaction being rescinded.

Inspection report required

Prior to selling a vehicle as "certified," the dealer must provide the buyer with a completed inspection report indicating all the components inspected as part of the certification program.[2] Dealers should have the buyer sign the completed inspection report, provide the buyer a copy, and keep a copy of the report signed by the customer in the deal file. If the dealer is utilizing the Reynolds Used Vehicle Disclosure form (LAWCA-UVHD-EX19), be sure to complete the "Inspection Report" section and have the buyer acknowledge receipt of the inspection report therein.



Inspection Report – If Applicable

☐ If this box is checked, the Vehicle is a "certified" used vehicle. You acknowledge receiving a copy of the certified used vehicle inspection report. (NOTE: Dealer may use a separate form acknowledging receipt of the certified used vehicle inspection report.)

Buyer Signature

Co-Buyer Signature

Strike "As Is" from all documentation

Dealers who advertise or sell a used vehicle as "certified" may neither sell the vehicle "as is," nor disclaim any implied warranties of merchantability regarding the vehicle.[3] Dealers should check all pertinent sales documents, especially the conditional sale contract and Used Car Buyers Guide forms, to ensure that "as is" and "no warranty" references do not appear.

DEALER TIP: NO "AS IS" FOR CERTIFIED

Because a "certified" used vehicle cannot be sold as is, dealership personnel must not use the "as is" version of the Buyers Guide form for such a vehicle.

[1] Vehicle Code § 11713.18
[2] Vehicle Code § 11713.18(a)(6)
[3] Vehicle Code § 11713.18(a)(7) and (8)

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Vehicles disqualified from being sold as certified

The statute creates a lengthy punch list of vehicle conditions, any one of which will disqualify a used vehicle from being sold as "certified." These conditions are:[4]

- Dealer has reason to know mileage on odometer is not correct;
- Dealer has reason to know vehicle sustained frame damage;
- Dealer has reason to know vehicle reacquired as a lemon;
- Vehicle title branded as lemon, salvage, flood, or similar designation;
- Vehicle sustained impact, fire, or flood damage that, even after repair, substantially impairs vehicle's use or safety; or
- Vehicle fails to meet requirements of applicable certification program or term "certified" is being used in a misleading way.

Dealers should adopt a policy that ensures no used vehicle disqualified by these standards will be advertised or sold as certified. Adding these standards to the certification program checklist being used is a good way to document compliance with such a policy.

Buyers Guide

"Certified" used vehicles are subject to the FTC's Used Car Rule and therefore must conspicuously display a properly completed Buyers Guide form disclosing the required warranty information. (See Chapter 21 for a discussion of the Buyers Guide requirements.

[4] Vehicle Code § 11713.18(a)

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CHAPTER 35: SAFETY RECALL ISSUES

This chapter discusses compliance issues relating to vehicles with open safety recalls.

Legal background

The Federal Motor Vehicle Safety Act prohibits the sale of a new motor vehicle with an open safety recall.[1] The required repairs must be performed on such vehicles before dealers can sell them. The Act empowers the National Highway Traffic Safety Administration (NHTSA) to investigate and take enforcement action against dealers that sell new vehicles with open safety recalls without performing the required repairs first. The penalties associated with non-compliance can be severe. In 2016, the NHTSA fined a suburban Phoenix dealership $40,000 for selling two vehicles without first repairing a malfunctioning generator control module that could drain the battery and cause the engine to stall, and in severe cases a fire in the trunk. The vehicles were repaired promptly after sale to retail customers, but the Act requires the repairs be performed prior to sale. In 2020, NHTSA fined an Oregon dealership $100,000 for selling new vehicles with open safety recalls.[2]

Federal law does not, however, prohibit the sale of used vehicles with open safety recalls.[2] It is not expressly prohibited under California law either, but a 2018 California appellate decision held that a dealer's failure to disclose an open safety recall on a used vehicle may be a violation of the Consumers Legal Remedies Act (CLRA) and the Unfair Competition Law (UCL), especially if the vehicle is being sold as "certified."[3]

Vehicle safety recall status

Dealers should receive notice from their same-line manufacturer(s) regarding safety recalls applicable to new vehicles, as well as used vehicles by the same manufacturer. Dealers should have a system in place to ensure that new vehicles with open safety recalls are not offered for sale to the public until the required repairs are performed.

Dealership personnel should obtain information regarding the safety recall status of every used vehicle in inventory, both at the time of acquisition and most importantly at the time of sale to a retail customer. The National Highway Traffic Safety Administration's recall database, available at www.nhtsa.gov/recalls , provides such information.

Performing repairs

If the dealer can perform the necessary repairs on a used vehicle because it is a franchised dealer of the same make, it should do so prior to offering the vehicle for sale to the public. Additionally, if the dealer cannot perform the repairs, but can reasonably have the repairs performed elsewhere, the best practice is to do so.

[1] 9 U.S.C. § 30112(a)(3)
[2] 9 U.S.C. § 30112(b)(1)
[3] Gutierrez v. Carmax Auto Superstores California (2018) 19 Cal. App. 5th 1234

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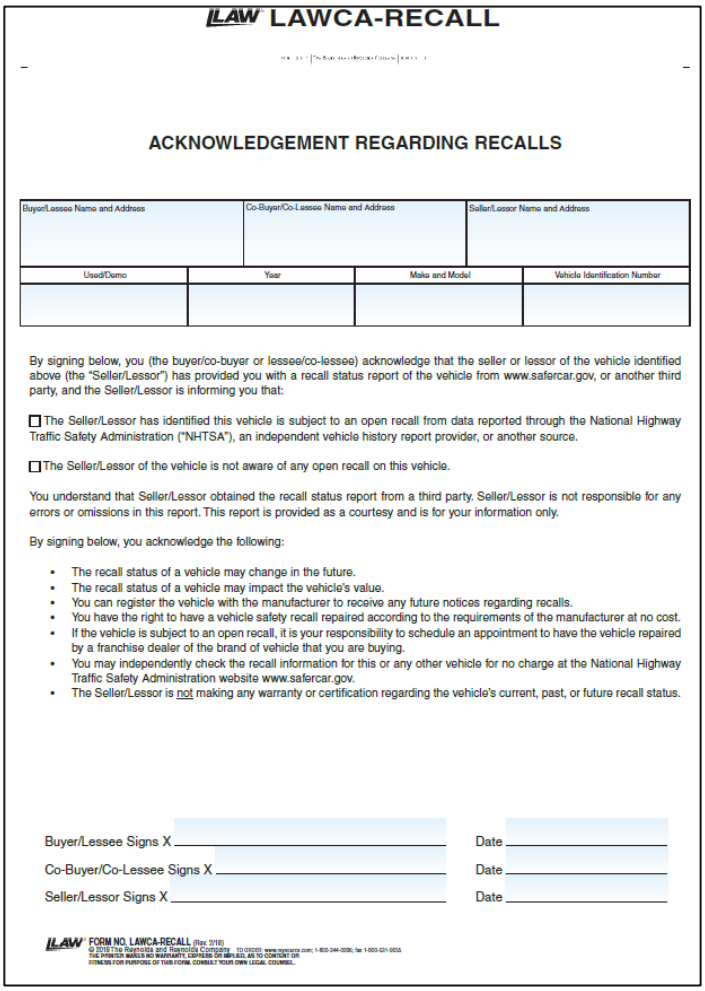
DEALER TIP: GET CUSTOMER ACKNOWLEDGMENT

Dealership personnel should not only disclose a used vehicle's safety recall status, but should also obtain a written customer acknowledgment.

Notice to customers and written acknowledgement

California courts have held that a used vehicle's safety recall status is a material fact. [4] Accordingly, dealers should always disclose this to customers. Dealers can obtain a used vehicle's safety recall status from the NHTSA database on the date of sale.

Additionally, dealers should obtain written acknowledgement from customers that used vehicles' safety recall status was provided to them. Reynolds form. No. LAWCA-RECALL, seen below, is good way to document this.



LAW LAWCA-RECALL

ACKNOWLEDGEMENT REGARDING RECALLS

Buyer/Lessee Name and Address	Co-Buyer/Co-Lessee Name and Address	Seller/Lessor Name and Address	
Used/Demo	Year	Make and Model	Vehicle Identification Number

By signing below, you (the buyer/co-buyer or lessee/co-lessee) acknowledge that the seller or lessor of the vehicle identified above (the "Seller/Lessor") has provided you with a recall status report of the vehicle from www.safercar.gov, or another third party, and the Seller/Lessor is informing you that:

☐ The Seller/Lessor has identified this vehicle is subject to an open recall from data reported through the National Highway Traffic Safety Administration ("NHTSA"), an independent vehicle history report provider, or another source.

☐ The Seller/Lessor of the vehicle is not aware of any open recall on this vehicle.

You understand that Seller/Lessor obtained the recall status report from a third party. Seller/Lessor is not responsible for any errors or omissions in this report. This report is provided as a courtesy and is for your information only.

By signing below, you acknowledge the following:

- The recall status of a vehicle may change in the future.
- The recall status of a vehicle may impact the vehicle's value.
- You can register the vehicle with the manufacturer to receive any future notices regarding recalls.
- You have the right to have a vehicle safety recall repaired according to the requirements of the manufacturer at no cost.
- If the vehicle is subject to an open recall, it is your responsibility to schedule an appointment to have the vehicle repaired by a franchise dealer of the brand of vehicle that you are buying.
- You may independently check the recall information for this or any other vehicle for no charge at the National Highway Traffic Safety Administration website www.safercar.gov.
- The Seller/Lessor is not making any warranty or certification regarding the vehicle's current, past, or future recall status.

Buyer/Lessee Signs X _____ Date _____

Co-Buyer/Co-Lessee Signs X _____ Date _____

Seller/Lessor Signs X _____ Date _____

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[4] Gutierrez v. Carmax Auto Superstores California (2018) 19 Cal. App. 5th 1234

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CHAPTER 36: MARKETING AND SELLING VEHICLES WITH PARTIAL AUTOMATION FEATURES

This chapter is about compliance issues implicated when marketing and selling vehicles with partial automation features.

Legal background

Many vehicles now come equipped with partial driving automation features, such as lane-keeping assist, electronic blind spot assistance, automated emergency braking systems, park assist, adaptive cruise control, lane departure warning, traffic jam assist, and other similar features. Some manufacturers have been accused of labeling such features in a misleading way. A new law effective January 1, 2023, aims to prevent deceptive marketing of these features and requires that buyers be given a disclosure notice describing the functions and limitations of the features.

This new law provides that manufacturers and dealers should not deceptively name or market any partial driving automation feature using language suggesting that the feature allows the vehicle to function as an autonomous vehicle, as defined in Vehicle Code § 38750, or otherwise has functionality not included in the feature.[1] Vehicle Code § 38750 defines an "autonomous vehicle" as any vehicle equipped with autonomous technology that has been integrated into that vehicle that meets the definition of Level 3, Level 4, or Level 5 of Society of Automotive Engineers (SAE) International's "Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles, Standard J3016 (April 2021)." A "partial driving automation feature" is defined as "Level 2 partial driving automation" in the SAE Standard J3016 (April 2021)."[2]

The law also provides that a violation is considered a "misleading advertisement" for purposes of Vehicle Code § 11713, which authorizes the DMV to impose penalties. Manufacturers and dealers may also be subject to civil liability for misleading statements regarding partial driving automation features.

Marketing Materials

It is recommended that dealers review their marketing materials for vehicles that have partial driving automation features to ensure that they do not contain any misleading statements.

Disclosures that dealers must provide to buyers

This new law requires dealers and manufacturers that sell new passenger vehicles equipped with any of the specified partial driving automation features, or that provide any software update or vehicle upgrade that adds a partial driving automation feature, to provide the buyer or owner with a distinct notice describing the functions and limitations of the features.[3] The new law obligates manufacturers to provide dealers with the "specific

[1] Vehicle Code § 24011.5(b)
[2] Vehicle Code § 24011.5(c)
[3] Vehicle Code § 24011.5(a)

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DEALER TIP: DON'T CHANGE OEM NOTICE LANGUAGE

Because a dealer cannot be found liable for violating this new law if the buyer is given a notice prepared by the manufacturer, dealers should not modify the language of the manufacturer's notice or otherwise alter the content of that notice.

language" for the disclosure notice so that dealers can then provide the notice to buyers prior delivering or upgrading the vehicle. The law only applies to the sale of "new passenger vehicles"—it does not apply to the sale of used vehicles or to leases. The best practice is for dealers to have the buyer sign the disclosure notice provided by the manufacturer (or have the buyer sign a form acknowledging receipt of the manufacturer's notice such as the Reynolds and Reynolds Partial Driving Automation Features Notice Form (LAWCA-PDAF) which follows) and retain a signed copy in the deal jacket as evidence of compliance with the law.

The law provides that a dealer may rely on the disclosure notice provided by the manufacturer. Most importantly, a dealer cannot be held liable for a violation of this law if the manufacturer fails to provide the dealer with the specific language for the disclosure notice, or if the notice contains any deceptive statements and is deemed not in compliance. Rather, a dealer is only liable if it receives the notice from the manufacturer but then fails to provide the notice to the customer. The law also specifies that compliance with the law shall not alter any existing duty of care or limit the civil liability of a manufacturer or dealer, including but not limited to, claims for negligence or product defect.[4]

Dealers should contact manufacturers to ensure that manufacturers have provided the proper documentation necessary to comply with this new law's requirement of providing the disclosure notice to buyers.

LAW LAWCA-PDAF

PARTIAL DRIVING AUTOMATION FEATURES NOTICE

Buyer Name and Address	Co-Buyer Name and Address	Seller Name and Address

New Vehicle:

Year	Make and Model	Vehicle Identification Number

California law requires motor vehicle manufacturers to provide to dealers and dealers to provide to new vehicle buyers information about the vehicle's "partial driving automation features". Partial driving automation features are "Level 2 partial driving automation" as defined by the Society of Automotive Engineers (SAE) Standard J3016 (2021).

The above New Vehicle that you (Buyer and Co-Buyer (if any)) are buying is equipped with one or more partial driving automation features. Accompanying this Notice is information provided by the motor vehicle manufacturer to comply with the California law.

It is important that you review the information provided and understand the functions and limitations of each feature. Please let us know if you have any questions about them.

By signing below, Buyer and Co-Buyer (if any) acknowledge receiving the included partial driving automation features information.

Buyer Signature X _____ Date _____

Co-Buyer Signature X _____ Date _____

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[4] Vehicle Code § 24011.5(d)

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CHAPTER 37: TRADE-IN HISTORY REPORT AND OTHER TRADE-IN DOCUMENTATION

This chapter covers trade-in vehicle condition reports, the trade pack, and Reg. 262 forms to be obtained from a customer.

Legal background

When a dealer acquires a trade-in vehicle, it is prudent to have a trade-in history report signed by the customer trading the vehicle in. Not only can this help screen out undesirable vehicles, it can also assist a dealer in defending against claims brought later that the dealer disposed of the trade-in without disclosing known defects or was negligent in investigating its condition.

Additionally, in connection with the acquisition of a trade-in, dealership personnel need to secure proper documentation to allow the dealer to make payments to the lienholder or lessor on the customer's behalf, secure title to the vehicle, and make proper notifications to the DMV. "Trade pack" and REG 262 forms should be carefully completed to accomplish this result.

Trade-in history report

The Reynolds and Reynolds Trade/Purchase Disclosure Form (Form LAWCA-96135) which follows is a trade-in history report form designed to gather pertinent information about the trade-in while at the same time avoiding single document rule issues. Dealership personnel should obtain the customer's signature on the form, give one copy to the customer and retain a copy in the deal jacket.

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Example form

LAWCA-96135

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TRADE/PURCHASE DISCLOSURE FORM

Customer Name(s) ("you")			Contract Date
Address (Street)	City	State	Zip

Year	Make	Model	VIN	Odometer

By initialing below next to each paragraph, you hereby declare to the best of your knowledge:

Customer's Initials	Co-Customer's Initials	
_____	_____	The vehicle has NOT been in an accident that has caused any **FRAME OR SUSPENSION DAMAGE** or caused the vehicle to be classified as **"SALVAGE."** A salvage vehicle is either of the following: 1. A vehicle that has been damaged to the extent that the owner, financial institution, or the insurance company that insured or is responsible for repair of the vehicle, considers it uneconomical to repair the vehicle and it is not repaired; or 2. A vehicle that was determined to be uneconomical to repair and, regardless of whether the vehicle was repaired or not, a total loss payment was made to an insured party and the insurance company informed the claimant of the need to report the total loss status to the DMV.
_____	_____	The vehicle has NOT been classified as a **"LEMON-LAW BUYBACK"** or **"WARRANTY RETURN"** by its manufacturer or any prior selling dealer. (A warranty return vehicle is a vehicle wherein the manufacturer or dealer accepted a return of the vehicle due to a claimed defect which existed in the condition or performance of the vehicle, which defect caused the vehicle to be returnable because of state or federal warranty laws.)
_____	_____	The vehicle was NOT a **PUBLICLY OWNED** vehicle, has NOT been previously used in law enforcement, or classified as a **POLICE** vehicle.
_____	_____	The vehicle has NOT been previously used as a **RENTAL** vehicle, used **FOR HIRE,** used as part of a **TRANSPORTATION NETWORK** (e.g., Uber, Lyft, etc.), or classified as a **TAXI**.
_____	_____	The vehicle was NOT manufactured for use outside of the United States or classified as a **GREY MARKET** vehicle.
_____	_____	The vehicle's **ODOMETER** has NOT been TAMPERED WITH, REPAIRED or REPLACED. The vehicle's **ODOMETER READING** is accurate.
_____	_____	The vehicle's **AIRBAGS,** if any, have NEVER been deployed and are fully functional at this time.
_____	_____	The vehicle has NOT sustained any **WATER DAMAGE** due to flooding or other water-related event.
_____	_____	The vehicle's EMISSIONS CONTROL system has NOT been REMOVED or TAMPERED WITH in any way. The vehicle has never been designated by the State of California as a **"GROSS POLLUTER."**
_____	_____	The vehicle has NEVER been MODIFIED or REPAIRED in such a way as to cause the **MANUFACTURER'S WARRANTY** (in part or in its entirety) to be voided.
_____	_____	There are no **LIENS** on this vehicle other than the one (if any) that appears on the vehicle's title and/or registration.
_____	_____	The vehicle's most recent **REGISTRATION RENEWAL FEES** due to the state were NOT paid by a check that was subsequently (or may be) returned due to a STOP-PAYMENT ORDER, INSUFFICIENT FUNDS, or a CLOSED-ACCOUNT.
_____	_____	The vehicle has never been **STOLEN** or REPORTED stolen.

By signing below, you represent that you understand the dealer is relying on these representations in both agreeing to acquire the vehicle and in establishing a value for its acquisition.

Date	Customer's Signature	Date	Co-Customer's Signature

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DMV trade pack

Proper function of DMV trade pack

The proper function of a DMV trade pack is to have the customer authorize the lienholder or lessor on a trade-in to accept payment from the dealer and to deliver a properly endorsed certificate of title to the dealer. In addition, a trade pack includes a Notice of Transfer and Release of Liability form (DMV Form REG 138), which must be submitted to the DMV within five calendar days of transferring the vehicle.[1] This form is used to notify the DMV that the customer no longer has an interest in the trade-in vehicle, and releases the owner from civil or criminal liability for any parking, abandonment, or operation of the vehicle occurring after the transfer date.

Avoid trade packs with payoff adjustments or other agreements

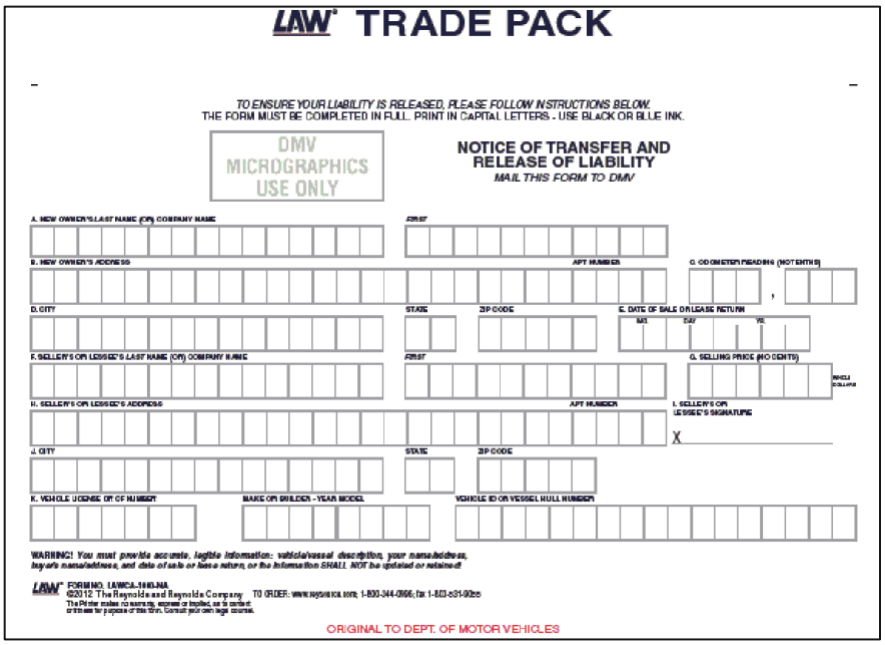
Dealers should avoid using trade packs that contain forms of agreement between the buyer or lessee and the dealer. For example, trade packs at one time contained "payoff adjustment" forms where the customer agreed to reimburse the dealer for any portion of the actual payoff amount exceeding the amount shown on the contract or lease. Such forms arguably violated the leasing single document rule. In addition to causing legal concerns, such forms are unnecessary. Specific language in the LAW RISC addresses this issue, and similar language can be inserted in the "lease box" in a lease agreement. (See Chapter 25 for further discussion of this issue.)

[1] Vehicle Code § 5900

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Example form

The Reynolds and Reynolds Trade Pack Form (Form LAWCA-1000-NA) which follows is an example of a trade pack form that fulfills its purpose without causing single document rule concerns. The form is an 8 ½ x 11 page with two parts separated by a perforation:



LAW TRADE PACK

TO ENSURE YOUR LIABILITY IS RELEASED, PLEASE FOLLOW INSTRUCTIONS BELOW.
THE FORM MUST BE COMPLETED IN FULL. PRINT IN CAPITAL LETTERS - USE BLACK OR BLUE INK.

DMV MICROGRAPHICS USE ONLY

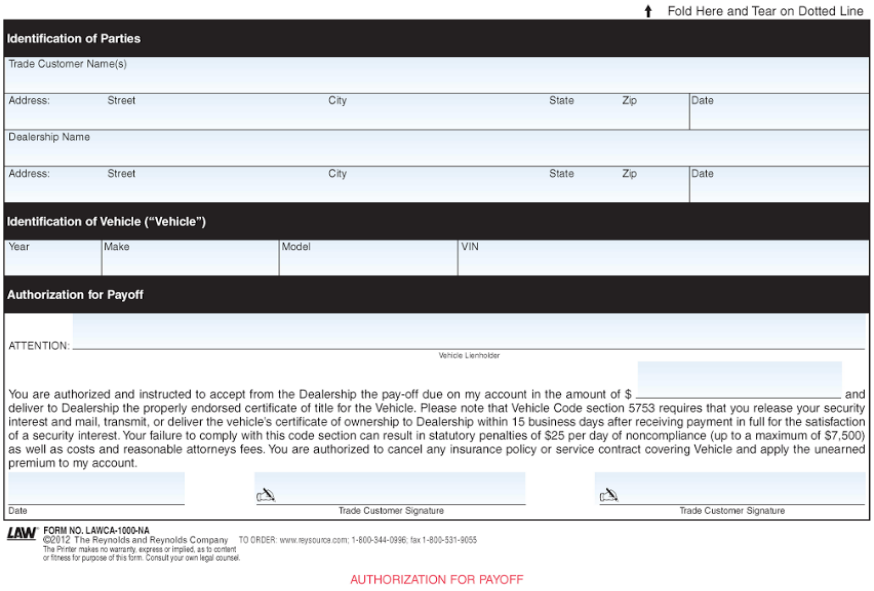
NOTICE OF TRANSFER AND RELEASE OF LIABILITY
MAIL THIS FORM TO DMV

A. NEW OWNER'S LAST NAME (OR) COMPANY NAME | FIRST
B. NEW OWNER'S ADDRESS | APT NUMBER | G. ODOMETER READING (NO TENTHS)
D. CITY | STATE | ZIP CODE | E. DATE OF SALE OR LEASE RETURN (MO. DAY YR.)
F. SELLER'S OR LESSEE'S LAST NAME (OR) COMPANY NAME | FIRST | G. SELLING PRICE (NO CENTS)
H. SELLER'S OR LESSEE'S ADDRESS | APT NUMBER | I. SELLER'S OR LESSEE'S SIGNATURE
J. CITY | STATE | ZIP CODE
K. VEHICLE LICENSE OR ID NUMBER | MAKE OR BUILDER - YEAR MODEL | VEHICLE ID OR VESSEL HULL NUMBER

WARNING! You must provide accurate, legible information: vehicle/vessel description, your name/address, buyer's name/address, and date of sale or lease return, or the information SHALL NOT be updated or retained!

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ORIGINAL TO DEPT. OF MOTOR VEHICLES



Fold Here and Tear on Dotted Line

Identification of Parties

Trade Customer Name(s)

Address: Street City State Zip Date

Dealership Name

Address: Street City State Zip Date

Identification of Vehicle ("Vehicle")

Year | Make | Model | VIN

Authorization for Payoff

ATTENTION: _____
Vehicle Lienholder

You are authorized and instructed to accept from the Dealership the pay-off due on my account in the amount of $ _____ and deliver to Dealership the properly endorsed certificate of title for the Vehicle. Please note that Vehicle Code section 5753 requires that you release your security interest and mail, transmit, or deliver the vehicle's certificate of ownership to Dealership within 15 business days after receiving payment in full for the satisfaction of a security interest. Your failure to comply with this code section can result in statutory penalties of $25 per day of noncompliance (up to a maximum of $7,500) as well as costs and reasonable attorneys fees. You are authorized to cancel any insurance policy or service contract covering Vehicle and apply the unearned premium to my account.

Date | Trade Customer Signature | Trade Customer Signature

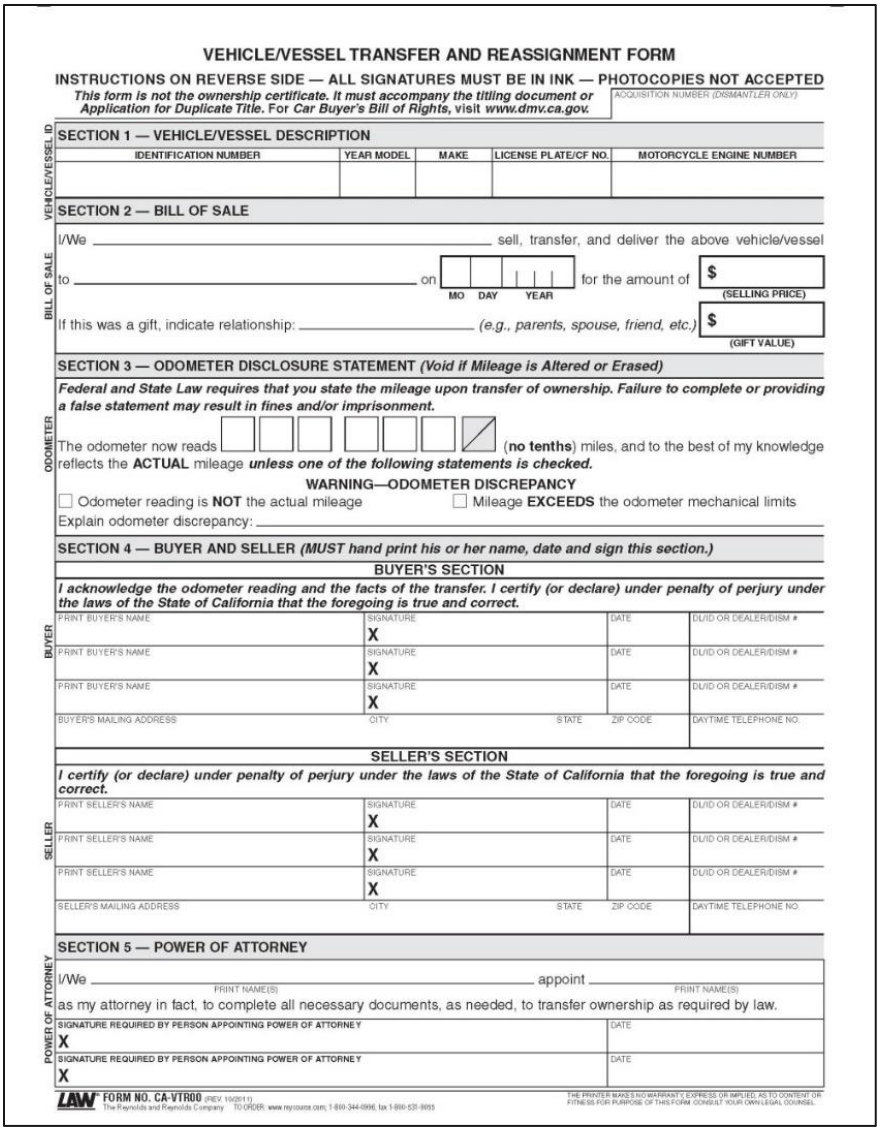
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AUTHORIZATION FOR PAYOFF

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Vehicle/Vessel transfer and reassignment form (REG 262)

The REG 262 Form is the key DMV form used by dealership personnel when accepting a trade-in vehicle. The form not only contains the required space for completion of the odometer disclosure when the title is unavailable at the time of transfer (e.g., when lost or held by a lienholder), but also includes a bill of sale to memorialize the transfer and a power of attorney authorizing the dealership to complete any other additional DMV paperwork on behalf of the customer (eliminating the need for further customer involvement with the DMV). Unlike most forms, the REG 262 is not available online, since it is printed on security paper to satisfy federal odometer disclosure laws. While the REG 262 form can be ordered through the DMV, this version does not come with a duplicate copy for dealer records. A duplicate version of the form which follows can be ordered through Reynolds and Reynolds (Form LAWCA-VTR00).



VEHICLE/VESSEL TRANSFER AND REASSIGNMENT FORM

INSTRUCTIONS ON REVERSE SIDE — ALL SIGNATURES MUST BE IN INK — PHOTOCOPIES NOT ACCEPTED

This form is not the ownership certificate. It must accompany the titling document or Application for Duplicate Title. For *Car Buyer's Bill of Rights,* visit *www.dmv.ca.gov.*

ACQUISITION NUMBER (DISMANTLER ONLY)

VEHICLE/VESSEL ID

SECTION 1 — VEHICLE/VESSEL DESCRIPTION

IDENTIFICATION NUMBER	YEAR MODEL	MAKE	LICENSE PLATE/CF NO.	MOTORCYCLE ENGINE NUMBER

BILL OF SALE

SECTION 2 — BILL OF SALE

I/We _____ sell, transfer, and deliver the above vehicle/vessel to _____ on ___ ___ ___ (MO DAY YEAR) for the amount of $ _____ (SELLING PRICE)

If this was a gift, indicate relationship: _____ *(e.g., parents, spouse, friend, etc.)* $ _____ (GIFT VALUE)

ODOMETER

SECTION 3 — ODOMETER DISCLOSURE STATEMENT *(Void if Mileage is Altered or Erased)*

Federal and State Law requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

The odometer now reads ☐☐☐☐☐☐☐ (**no tenths**) miles, and to the best of my knowledge reflects the **ACTUAL** mileage ***unless one of the following statements is checked.***

WARNING—ODOMETER DISCREPANCY

☐ Odometer reading is **NOT** the actual mileage ☐ Mileage **EXCEEDS** the odometer mechanical limits

Explain odometer discrepancy: _____

SECTION 4 — BUYER AND SELLER *(MUST hand print his or her name, date and sign this section.)*

BUYER

BUYER'S SECTION

I acknowledge the odometer reading and the facts of the transfer. I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

PRINT BUYER'S NAME	SIGNATURE	DATE	DL/ID OR DEALER/DISM #
	X		
PRINT BUYER'S NAME	SIGNATURE	DATE	DL/ID OR DEALER/DISM #
	X		
PRINT BUYER'S NAME	SIGNATURE	DATE	DL/ID OR DEALER/DISM #
	X		
BUYER'S MAILING ADDRESS	CITY STATE ZIP CODE		DAYTIME TELEPHONE NO.

SELLER

SELLER'S SECTION

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

PRINT SELLER'S NAME	SIGNATURE	DATE	DL/ID OR DEALER/DISM #
	X		
PRINT SELLER'S NAME	SIGNATURE	DATE	DL/ID OR DEALER/DISM #
	X		
PRINT SELLER'S NAME	SIGNATURE	DATE	DL/ID OR DEALER/DISM #
	X		
SELLER'S MAILING ADDRESS	CITY STATE ZIP CODE		DAYTIME TELEPHONE NO.

POWER OF ATTORNEY

SECTION 5 — POWER OF ATTORNEY

I/We _____ (PRINT NAME(S)) appoint _____ (PRINT NAME(S))

as my attorney in fact, to complete all necessary documents, as needed, to transfer ownership as required by law.

SIGNATURE REQUIRED BY PERSON APPOINTING POWER OF ATTORNEY	DATE
X	
SIGNATURE REQUIRED BY PERSON APPOINTING POWER OF ATTORNEY	DATE
X	

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Lease turn-in odometer readings

Federal and state laws require odometer disclosures to be made when a vehicle is being transferred.[2] In a lease turn-in situation, the owner of the vehicle (lessor) is unlikely to be present when ownership is actually transferred to a third party (such as a dealer). Accordingly, federal law requires lessees to provide a written odometer disclosure form to the lessor, which may use this reading when transferring the vehicle.[3] When a dealer is involved with facilitating the lease turn-in, the dealer should obtain an odometer disclosure statement designed for this purpose, such as the Reynolds and Reynolds Odometer Disclosure Statement (Leased Vehicle) Form (Form LAWCA-198T-L) which follows. Dealers should be sure to collect other paperwork that may be required as outlined in lessor instructions, such as lease turn-in statements or vehicle condition reports.

[2] Vehicle Code § 5900(b)
[3] 49 CFR § 580.7(b)

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Example form

ODOMETER DISCLOSURE STATEMENT (LEASED VEHICLE)

Federal Law (and State Law, if applicable) requires that the lessee discloses the mileage to the lessor in connection with the transfer of ownership. Failure to complete or making a false statement may result in fines and/or imprisonment. Complete disclosure form below and return to lessor.

I, _____ (name of person making disclosure, Print)

state that the odometer now reads _____ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below, unless one of the following statements is checked.

☐ (1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

☐ (2) I hereby certify that the odometer reading is NOT the actual mileage. **WARNING: ODOMETER DISCREPANCY.**

MAKE	MODEL	BODY TYPE	VEHICLE IDENTIFICATION NUMBER	YEAR

Lessee's Name _____

Lessee's Address _____ (street) (city) (state) (zip code)

Lessee's Signature X _____ Date of Statement _____

Lessor's Name _____

Lessor's Address _____ (street) (city) (state) (zip code)

Date Disclosure Form Sent to Lessee _____ Date Completed Disclosure Form Received from Lessee _____

Lessor's Signature X _____

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ORIGINAL

↑ Fold Here and Tear on Dotted Line

Identification of Parties

Trade Customer Name(s)					
Address:	Street	City	State	Zip	Date
Dealership Name					
Address:	Street	City	State	Zip	Date

Identification of Vehicle ("Vehicle")

Year	Make	Model	VIN

Authorization for Payoff

ATTENTION: _____
Vehicle Lienholder

You are authorized and instructed to accept from the Dealership the pay-off due on my account in the amount of $ _____ and deliver to Dealership the properly endorsed certificate of title for the Vehicle. Please note that Vehicle Code section 5753 requires that you release your security interest and mail, transmit, or deliver the vehicle's certificate of ownership to Dealership within 15 business days after receiving payment in full for the satisfaction of a security interest. Your failure to comply with this code section can result in statutory penalties of $25 per day of noncompliance (up to a maximum of $7,500) as well as costs and reasonable attorneys fees. You are authorized to cancel any insurance policy or service contract covering Vehicle and apply the unearned premium to my account.

Date _____ Trade Customer Signature _____ Trade Customer Signature _____

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AUTHORIZATION FOR PAYOFF

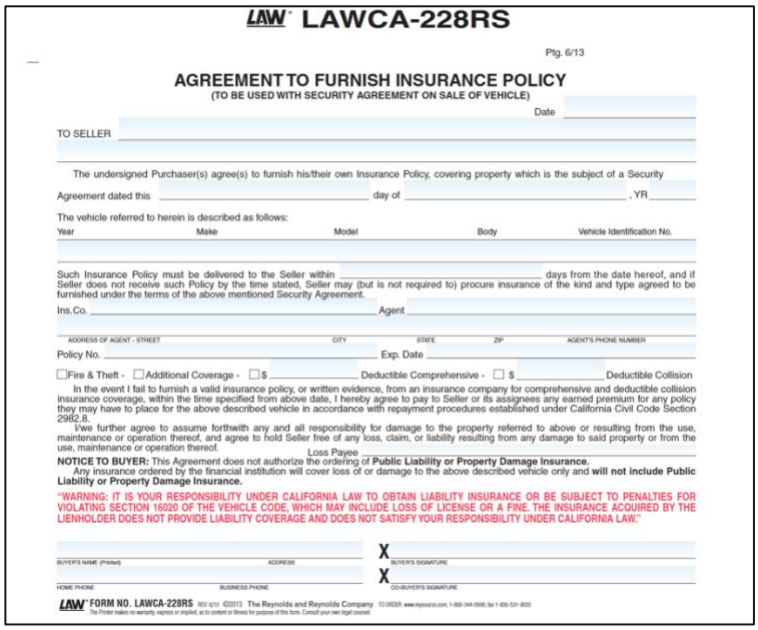
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CHAPTER 38: INSURANCE

This chapter discusses important insurance issues relating the sale or lease of a vehicle.

Legal background

Licensing laws included in the California Insurance Code apply to dealers and dealership personnel receiving commission on the sale of insurance as part of a vehicle sale or lease transaction.[1] (See Chapter 53 for a further discussion of these licensing requirements.) Because these licensing requirements are extensive, most dealers and dealership personnel are not licensed to sell insurance. However, dealership personnel are routinely involved in obtaining insurance information from customers.



LAW LAWCA-228RS

Pfg. 6/13

AGREEMENT TO FURNISH INSURANCE POLICY
(TO BE USED WITH SECURITY AGREEMENT ON SALE OF VEHICLE)

Date _____

TO SELLER _____

The undersigned Purchaser(s) agree(s) to furnish his/their own Insurance Policy, covering property which is the subject of a Security Agreement dated this _____ day of _____, YR _____

The vehicle referred to herein is described as follows:

Year | Make | Model | Body | Vehicle Identification No.

Such Insurance Policy must be delivered to the Seller within _____ days from the date hereof, and if Seller does not receive such Policy by the time stated, Seller may (but is not required to) procure insurance of the kind and type agreed to be furnished under the terms of the above mentioned Security Agreement.

Ins.Co. _____ Agent _____

ADDRESS OF AGENT - STREET | CITY | STATE | ZIP | AGENT'S PHONE NUMBER

Policy No. _____ Exp. Date _____

☐Fire & Theft - ☐Additional Coverage - ☐$ _____ Deductible Comprehensive - ☐$ _____ Deductible Collision

In the event I fail to furnish a valid insurance policy, or written evidence, from an insurance company for comprehensive and deductible collision insurance coverage, within the time specified from above date, I hereby agree to pay to Seller or its assignees any earned premium for any policy they may have to place for the above described vehicle in accordance with repayment procedures established under California Civil Code Section 2982.8.

I/we further agree to assume forthwith any and all responsibility for damage to the property referred to above or resulting from the use, maintenance or operation thereof, and agree to hold Seller free of any loss, claim, or liability resulting from any damage to said property or from the use, maintenance or operation thereof.

Loss Payee _____

NOTICE TO BUYER: This Agreement does not authorize the ordering of **Public Liability or Property Damage Insurance.** Any insurance ordered by the financial institution will cover loss of or damage to the above described vehicle only and **will not include Public Liability or Property Damage Insurance.**

"WARNING: IT IS YOUR RESPONSIBILITY UNDER CALIFORNIA LAW TO OBTAIN LIABILITY INSURANCE OR BE SUBJECT TO PENALTIES FOR VIOLATING SECTION 16020 OF THE VEHICLE CODE, WHICH MAY INCLUDE LOSS OF LICENSE OR A FINE. THE INSURANCE ACQUIRED BY THE LIENHOLDER DOES NOT PROVIDE LIABILITY COVERAGE AND DOES NOT SATISFY YOUR RESPONSIBILITY UNDER CALIFORNIA LAW."

BUYER'S NAME (Printed) | ADDRESS | X BUYER'S SIGNATURE

HOME PHONE | BUSINESS PHONE | X CO-BUYER'S SIGNATURE

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Role in Verifying Insurance

As part of the vehicle sale or lease process, dealership personnel do discuss vehicle insurance with customers. Depending on the terms of the applicable retail dealer agreement (see the "warranty that vehicle is insured" section in Chapter 49), dealership personnel may in fact be obligated to verify that a customer has the comprehensive, collision, and liability vehicle insurance coverage required by the lender involved. At the very least, dealership personnel will be required to obtain vehicle insurance information from the customer to pass on to the lender involved. It is imperative that dealership personnel understand their responsibilities regarding customer insurance and carry them out completely to avoid a claim from a lender that the dealership repurchase a contract (usually such a claim arises when the customer has an accident and for some reason there is no insurance coverage for the vehicle).

DEALER TIP: GET COMPLETE INSURANCE INFORMATION

Dealership personnel should take extra care to see that an Agreement to Provide Insurance Policy form is accurately (and completely) filled out and signed by the customer (and co-buyer when applicable) to help protect a dealership against claims arising from accidents involving sold or leased vehicles where there is no insurance coverage. If dealership personnel assist a customer in securing a short term insurance binder, the information regarding that binder should be accurately shown on the form.

Agreement to Provide Insurance

Dealership personnel routinely have a customer complete and sign a form agreement which commits the customer to provide comprehensive and collision insurance applicable to the vehicle being purchased or leased. The

[1]Insurance Code § 1631 et seq.

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Reynolds & Reynolds Agreement to Furnish Insurance Policy Form LAWCA – 228RS shown here is an example of such a form used for a vehicle sale. The information needed to complete this form includes the transaction date, the dealership's name (as the seller), the date of the installment sale contract, a description of the vehicle sold, the deadline for the customer's insurance policy to be delivered, the name of the insurance company and agent, the agent's address and phone number, the insurance policy number and expiration date, coverage and deductible information, and the name of the loss-payee.

Insurance Binders

Short term insurance binders under blanket commercial physical damage policies are sometimes issued to otherwise uninsured buyers through the F&I department. Under this approach, a dealer cannot receive a profit when reimbursed for the cost of such a binder unless the dealer is properly licensed with the Department of Insurance. In addition, unless the dealer absorbs the entire cost of the binder as a cost of doing business (as many do), dealership personnel must be very careful in handling collection of all or any portion of the dealer's out of pocket cost for the binder. Unless the dealer is prepared to disclose the binder reimbursement amount in the contract's statement of insurance (see discussion of completing the statement of insurance section of the LAW RISC in Chapter 24), the reimbursement amount should be collected by means of a separate check received only after the conditional sale contract is signed and vehicle delivery is complete. Dealers should be careful to avoid recouping costs of an insurance binder by increasing the cash price of the vehicle —doing so is a clear violation of California law.[2]

DEALER TIP:
INSURANCE BINDERS

Dealership personnel involved in assisting customers to obtain insurance binders should be alert to address any indication that a binder has not actually been issued. There also should be no oral or written communication to a customer that a binder satisfies the customer's obligation under state law to maintain liability insurance unless the binder provides such coverage.

[2] Civil Code § 2981(e)

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CHAPTER 39: DUE BILLS

This chapter discusses legal issues bearing on the use of due bills and similar forms.

Legal background

Dealers have historically used due bills and similar forms to memorialize additional work to be performed on a vehicle after delivery, such as installation of accessories financed on a conditional sale contract. Some of these forms, however, are drafted to include agreements that may violate the single document rules or the accessory disclosure requirements of the California Vehicle Leasing Act (CVLA).

Due bills

Proper function of due bill

The main function of due bills is to serve as a kind of "to do" list and to provide confirmation to dealership personnel that they are authorized to provide or install accessories to the holder of the due bill. Due bills should not, however, be allowed to "morph" into *agreements* between the dealer and the customer.

Avoiding single document rule problems

Dealers should avoid using due bills that contain agreements between the buyer or lessee and the dealer. For example, a due bill should not include a provision whereby a customer agrees that he or she will lose her right to have purchased accessories installed if the vehicle is not presented within a set period of time. However, the use of language in a due bill that suggests that a vehicle be brought in promptly should not pose a problem.

These guidelines are important because due bill forms that contain agreements between the lessee and the dealer can violate the lease single document rule if they contain agreements that relate to the lease or leased vehicle. Such forms can violate the retail contract single document rule if they contain agreements that relate to the price or terms of payment of the vehicle being purchased. (See discussion of the single document rule in Chapter 26.)

Due bills are not substitutes for required compliance

For leased vehicles, the lease agreement itself must itemize the value and provide a description of *each* accessory and item of optional equipment a dealer will add to the vehicle after the lease signing.[1] A due bill cannot serve as a substitute for this requirement.

Similarly, a due bill cannot be used as a substitute for California's required pre-contract disclosure statement, which must disclose certain goods and services (including theft deterrent devices), and provide installment

[1] Civil Code § 2985.8(c)(2)(B)

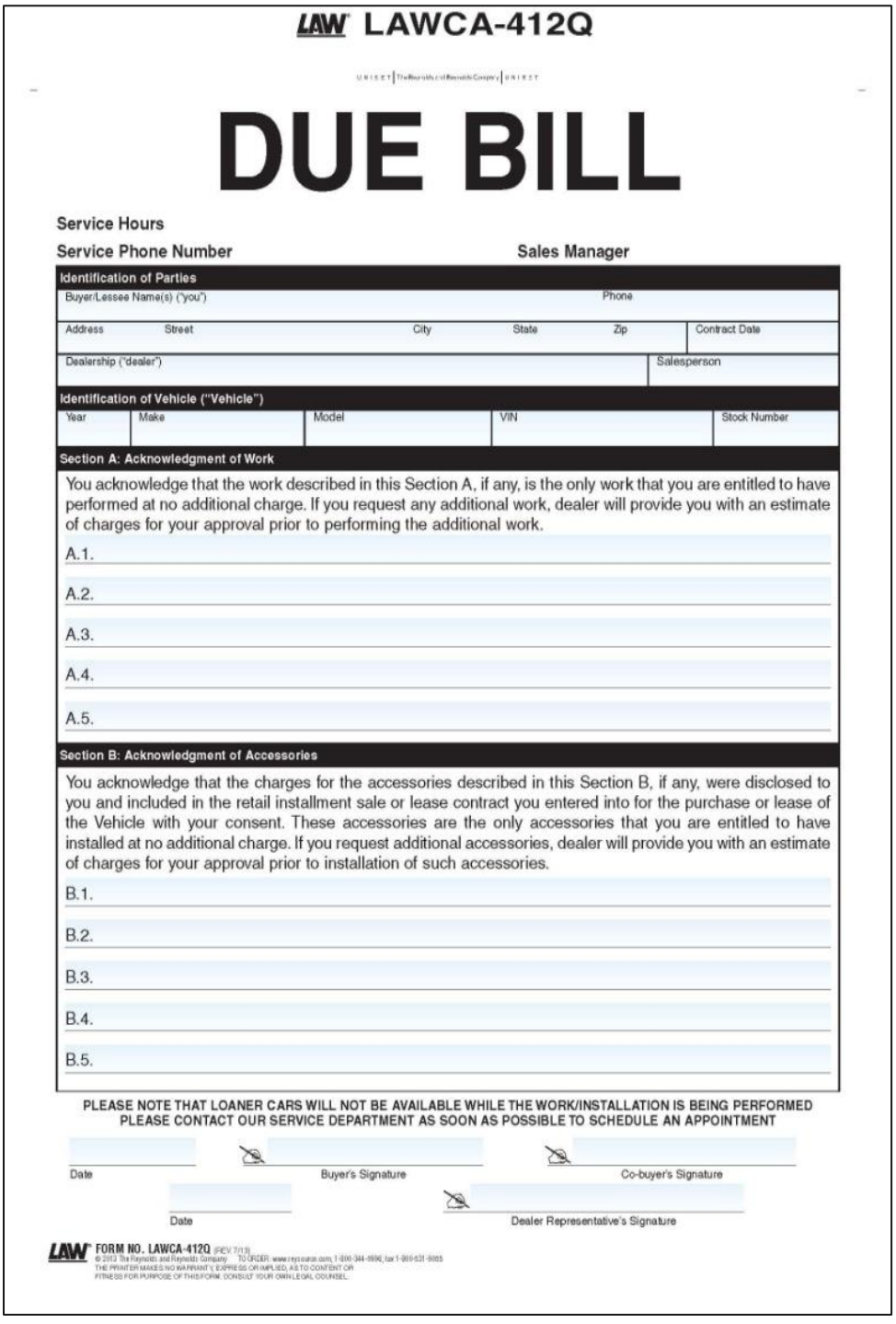
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payments including and excluding such items.[2] (See Chapter 22, Pre-Contract Disclosure Statement for additional information.)

Example form

Reynolds and Reynolds Due Bill Form (Form LAWCA-412Q) is an example of a due bill form that sidesteps single document rule problems by avoiding any agreements between the parties. Section A of the form is used to describe work to be performed (e.g., removing dents or adding pinstripes). Section B of the form is used to describe accessories to be installed (e.g., installation of an alarm system).

An added benefit of this form is that it may help prevent against false "payment packing" allegations by customers. As discussed in Chapter 12, California law prohibits adding goods or services to the contract after the vehicle price was negotiated without previously disclosing the goods and services and obtaining customer consent. The example form allows for itemization of each accessory to be installed on the vehicle, and provides for customer acknowledgement that the accessories were previously disclosed and added to the contract with customer consent.



LAW LAWCA-412Q

DUE BILL

Service Hours

Service Phone Number Sales Manager

Identification of Parties

Buyer/Lessee Name(s) ("you") Phone

Address Street City State Zip Contract Date

Dealership ("dealer") Salesperson

Identification of Vehicle ("Vehicle")

Year Make Model VIN Stock Number

Section A: Acknowledgment of Work

You acknowledge that the work described in this Section A, if any, is the only work that you are entitled to have performed at no additional charge. If you request any additional work, dealer will provide you with an estimate of charges for your approval prior to performing the additional work.

A.1.

A.2.

A.3.

A.4.

A.5.

Section B: Acknowledgment of Accessories

You acknowledge that the charges for the accessories described in this Section B, if any, were disclosed to you and included in the retail installment sale or lease contract you entered into for the purchase or lease of the Vehicle with your consent. These accessories are the only accessories that you are entitled to have installed at no additional charge. If you request additional accessories, dealer will provide you with an estimate of charges for your approval prior to installation of such accessories.

B.1.

B.2.

B.3.

B.4.

B.5.

PLEASE NOTE THAT LOANER CARS WILL NOT BE AVAILABLE WHILE THE WORK/INSTALLATION IS BEING PERFORMED
PLEASE CONTACT OUR SERVICE DEPARTMENT AS SOON AS POSSIBLE TO SCHEDULE AN APPOINTMENT

Date Buyer's Signature Co-buyer's Signature

Date Dealer Representative's Signature

LAW FORM NO. LAWCA-412Q (REV 7/13)

[2] Civil Code § 2982.2

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CHAPTER 40: CUSTOMER COPY AND DISCLOSURE REQUIREMENTS

This chapter discusses the requirements for presenting the sale or lease contract disclosures to the customer in a compliant manner and providing the buyer or lessee a copy of the sale or lease contract and other required documents.

Legal background

The California Automobile Sales Finance Act (ASFA) and the California Vehicle Leasing Act (CVLA) require the dealer to provide the buyer or lessee, respectively, with copies of not only the contract or lease but of other specific documents as well.[1] A separate law requires copies of other agreements for the sale of other goods or services (e.g., service contracts, subscription agreement etc.) to be provided to the buyer.[2]

The federal Truth in Lending Act (TILA) and Regulation Z have very specific requirements for providing the customer with a copy of the contract and the disclosures it contains.[3] Dealers should apply these requirements to lease transactions as well.

Copies required to be provided to buyer

In conditional sale contract transactions, a dealer must provide the customer with a copy of each of the following, if used in the transaction:

- Fully executed copy of the conditional sale contract-signed by the dealer and the buyer;
- GAP addendum or similar agreement;
- Used Car Buyers Guide attached to the contract;
- Any purchase order signed by the buyer;
- Any credit application signed by the buyer;
- Any vehicle purchase proposal the buyer has signed at the request of dealership personnel during negotiations. To be in clear compliance, this should include all worksheets, menus, disclosure statements, or other documents the customer has been requested to sign or initial;
- Service contract forms or agreements;
- Used vehicle safety recall status;
- Factory and dealer warranties; and
- All other agreements prepared by the dealer and signed by the customer for the purchase, subscription, or lease of goods or services, regardless of the identity of the actual vendor or supplier.

[1] Civil Code §§ 2981.9, 2985.8(h), and 2986.4
[2] Civil Code § 1799.200 et seq.
[3] 15 U.S.C. § 1601 et. seq.; Reg. Z, 12 CFR § 226.1 et seq.

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Truth in Lending disclosure rules and consumer copy timing requirements

No separate customer copy required before signing

After years of argument over when Regulation Z requires the customer to be given a copy of a conditional sale contract, the Federal Reserve Board issued an Official Comment that upheld the standard practice where

> "a creditor gives a consumer a multiple-copy form containing a credit agreement and TILA disclosures. The consumer reviews and signs the form and returns it to the creditor, who separates the copies and gives one copy to the consumer to keep. The creditor has satisfied the disclosure requirement."[4]

Other language in the Comment focuses on the two key requirements for complying with the copy rules: (1) that the customer be allowed to have possession of the contract before signing and (2) that the customer receives his or her own copy right after signing.

Contract stack to be *physically* handed over to customer

The Official Comment notes that it is not enough to merely *show* the contract to the customer—such as where dealership personnel keeps one hand on the contract as he or she shows it to the customer. Instead, the customer must be *free to take possession of and review the contract in its entirety – front and back – before signing.*

Customer copy to be immediately given to customer after signing

California law requires dealers to provide the customer with a copy of the contract bearing the selling dealer's signature before a vehicle is delivered.[5] As a result, dealers should ensure that all dealership personnel involved in contract preparation understand their obligation to "hand off" to the customer the entire contract set before the customer signs and to give the customer a copy of the contract showing the customer's and dealer's signatures immediately after the contract is signed by the customer. Dealership personnel are prohibited from telling a customer that his or her contract copy will be provided at a later time, such as when the dealer signs the document or when the financing source approves it.

Electronic copies of transaction documents

California law requires dealers to provide the customer with a written, fully executed copy of the contract before a vehicle is delivered,[6] and, as discussed, copies of other transaction documents must also be provided. An argument can be made that copies of the contract and other transaction documents provided by e-mail or on a USB drive or similar means satisfies requirements to provide copies to a customer, but such an argument has not been tested by appellate courts. Accordingly, the best practice would be to print out (if not already in paper form) all electronically signed transaction documents, particularly the fully executed contract, and to provide copies to the customer before a vehicle is delivered. If such a practice is not followed, there is a risk of a

[4] 12 CFR § Pt. 226 supp. I, subpart C
[5] Civil Code § 2981.9
[6] 12 CFR Pt. 226 supp. I, subpart C

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customer alleging that failure to provide printed copies violates applicable laws, particularly if a customer cannot access the copies provided in electronic form.

If a dealer makes a decision to provide copies of transaction documents in electronic form, it is recommended that the dealership have customers sign an acknowledgement confirming that in lieu of receiving printed copies the customer has elected to receive electronic copies of the transaction documents (including the retail sale contract or lease agreement) by the method in which the electronic copies will be provided (e.g., email or USB drive). If a customer signs such an acknowledgement but also requests printed copies, the recommended approach would be to also provide printed copies.

Customer to be allowed to leave with an unsigned copy if requested

While the Comment specifies the sequence of events necessary to comply with the copy requirements in typical transactions, it does not specifically address all scenarios and permutations. For example, what if the customer wants to leave with the contract before it is signed? The dealer should allow the customer to do so, but can ask the customer to take only one of the copies, and leave the remainder of the copies with the dealer for the dealer's records.

Follow similar procedures for leases

Most of the copy requirements discussed in this chapter are applicable to lease transactions as well. It is recommended that leases be handled in the same manner previously discussed.

Spanish and Asian translation requirements

Chapter 31 discusses circumstances where the dealer is required to provide the buyer with a translated copy of the conditional sale contract or lease agreement (and other documents). If applicable, the translated documents should be completely filled in, and a copy given to the buyer or lessee before the contract or lease is signed.

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CHAPTER 41: PAYMENT BY CREDIT CARD

This chapter discusses legal issues bearing on payment by credit card.

Legal background

A number of federal and state laws impact the use of credit cards.[1] As noted below, the use of credit cards is generally not impacted by the California Automobile Sales Finance Act (ASFA).

Acceptance of card not prohibited by law

No law prohibits acceptance of credit cards for vehicle purchase or lease contract or lease down payments. However, retail dealer agreements with financing sources may contain warranties by the dealer that a customer's down payment has been paid in cash. In that situation, a breach of warranty claim could be asserted against the dealer unless the contract actually discloses that the payment was made by credit card and there is other written proof that the lender knew about the credit card payment before it funded the deal. Additionally, if the dealer knows the use of the credit card will increase the outstanding balance on an open account listed on the customer's credit application, the finance source might claim the dealer concealed or misrepresented the customer's credit application.

No requirement that dealer accept card

No law requires dealers to accept credit cards in lieu of other payment methods, although merchant agreements with credit card issuers often require acceptance of the card as to "all goods and services offered by Merchant." Many card issuers are aware, however, of the problems uniquely faced by dealers and allow dealers to accept credit cards in the service and parts departments only. Some card issuers allow the dealers to refuse payment by credit cards when the payment would exceed $1,000, or some other cap amount set by the dealer. On the other hand, other card issuer merchant agreements employ a "take it or leave it" approach: requiring the dealer to either accept credit cards for any or all of the purchase price (with no cap), or not accept credit cards at all in the sales department. Under these circumstances, a dealer would have to remove all credit card emblems and logos from the showroom and sales areas.

Credit card surcharges

On its face, California law prohibits retailers from charging a credit card surcharge, even if only for the purpose of passing on to the consumer the credit card transaction fee.[2] However, a 2018 Ninth Circuit Court of Appeals decision called into question the constitutionality of this law.[3] In that case, the plaintiffs were a group of retailers (none of whom were automobile dealers), and the Ninth Circuit found that the California statute[4] that prohibited the imposition of the surcharge violated the retailers' commercial freedom of speech rights under the First

[1] 15 U.S.C. §§ 1666-1666j; Civil Code § 1747.01 et seq.
[2] Civil Code § 1748.1
[3] Italian Colors Restaurant v. Becerra, 878 F.3d 1165 (9th Cir. 2018)
[4] Civil Code § 1748.1

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Amendment. Unfortunately, the Ninth Circuit limited its decision to parties to that case, and did not strike down the law for all retailers.

The California Attorney General's website includes a statement indicating that the Court of Appeals decision is narrow in its scope, and that the Attorney General reserves the ability to enforce the prohibition against credit card surcharges depending on the particular facts involved, including, in particular, targeting retailers that mislead customers in regard to surcharges, including by imposing surcharges surreptitiously at the point of sale.[5] Dealers considering implementing credit card surcharges should also note that vehicle sales and lease transactions are strictly regulated by state and federal laws that do not contemplate credit card surcharges, and require precise disclosure of specific charges. Furthermore, dealers' retail lending agreements may prohibit the imposition of credit card surcharges.

An analysis of key factors relating to the potential legal and contractual restrictions applicable to operating a dealership weighs in favor of the conclusion that dealers should not impose such surcharges. CNCDA strongly discourages dealers from imposing credit card surcharges in vehicle sales and lease transactions unless the dealer receives clear authorization from competent counsel to collect such charges.

Credit card "stop payment" rights against dealers

Legally, any complaint a customer has against a dealer may also be asserted against the credit card issuer, and the customer may not be required to pay his or her credit card bill for such charges until the dispute is resolved. The card issuer can immediately charge back the disputed amounts against the dealer. The customer must first try to work out the problem directly with the dealer, and may then be required to raise the dispute with the card issuer – but must do so within 60 days of receiving the credit card bill showing the charge with the credit card issuer then having up to 90 days to investigate.[6]

Escalation of complaint process

Card issuers have customer service staffs to handle billing disputes. Because staff members are required to independently assess the customer's position in a dispute, they may not automatically accept the dealer's version of events. Because of their legal and contractual rights of charge back and dislike of open billing items, staff members can put pressure on a dealer to settle, or advise the customer to seek regulatory agency intervention. Because these staff members are versed in the heavily regulated area of mail order charges, where customers have many more legal rights, it may be their tendency to overstate customer rights in all "big ticket" charge situations even if the mail order rules don't apply to vehicle transactions.

[5] https://oag.ca.gov/consumers/general/credit-card-surcharges
[6] 15 U.S.C. § 1666(a); Civil Code §§ 1747.02(g), (h) and 1747.40

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CHAPTER 42: OFFSITE DELIVERIES

This chapter discusses legal issues bearing on offsite deliveries.

Legal background

California law effectively provides that a dealer should not "sell" a vehicle from a location other than the dealer's posted established place of business or authorized branch location(s).[1] Specifically, the applicable statute states that "a dealer shall not sell any vehicle at retail at a location that is not posted pursuant to Vehicle Code section 11709." Section 11709 requires the licenses (originals or copies) to be posted at the dealership. A DMV memo dated March 8, 2000 (2000 Offsite Memo) provides guidance on this law. The 2000 Offsite Memo concludes that the Vehicle Code is not violated if a vehicle is delivered offsite, so long as the "sale has been consummated and relevant documents have been prepared and executed in accordance with all applicable laws."

During the onset of the COVID-19 Pandemic, the DMV provided further guidance to clarify the requirements for "off-site delivery of a vehicle to a purchaser during [the COVID-19] outbreak period" (Pandemic Offsite Memo).[2] These requirements are noted in the section on "permissible offsite deliveries," below. On March 16, 2021, the DMV issued another memo, which clarified that (other than the social distancing requirements described in the memo) the requirements on offsite deliveries "pre-dated the COVID-19 outbreak and will remain in effect beyond the close of the outbreak."[3]

The FTC's Door-To-Door Solicitation Rule allows for a "3 day cooling off period."[4] It applies where a retail customer is "solicited" by representatives of a seller in person at the customer's home or other offsite location, and the agreement to purchase is made offsite. The rule does not apply to sales pursuant to prior negotiations during a visit by the buyer to the dealership, nor to sales conducted and consummated entirely by mail or telephone (and presumably Internet) without face-to-face contact between the buyer and the seller prior to delivery. The FTC has issued a non-binding opinion letter stating that the rule does not apply to offsite vehicle sales where the offsite activities are limited to delivering the vehicle and obtaining the buyer's signature on a fully completed contract that contains terms that were negotiated before the delivery occurred.[5]

Autobrokers

With the franchised selling dealer's written approval, California law permits an autobroker to deliver a vehicle and obtain a consumer's signature on the selling dealer's sale contract that was previously executed by the selling dealer.[6] However, autobrokers are licensed dealers, and no law permits autobrokers to deliver vehicles

[1] Vehicle Code § 11714(b)
[2] DMV Occupational Licensing industry News OLIN 2020-04, available at https://www.dmv.ca.gov/portal/file/20olin04-pdf
[3] DMV Occupational Licensing industry News OLIN 2021-01, available at https://www.dmv.ca.gov/portal/file/21olin01-pdf/
[4] 16 CFR § 429.1
[5] FTC Advisory Opinion Letter to California Motor Car Dealers Association dated March 16, 2001
[6] Vehicle Code § 11735(d)

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away from their *own* established places of business. Therefore, all rules discussed in this chapter apply not only to the selling dealer, but to autobrokers as well.

Offsite deliveries by autobrokers are further complicated by the statutory prohibition against dealers allowing other dealers (including autobrokers) to use their reports of sale and dealer plates.[7] Furthermore, relatively strict factory protocols often require dealership personnel to conform to a checklist of requirements at the time of retail delivery.

Permissible offsite deliveries

The 2000 Offsite Memo says that each sale must be "made" at the dealer's established place of business, but identifies the following permissible offsite delivery activities:

- **Courtesy Delivery.** If the customer signs the purchase contract and all applicable documents at dealership, the dealer may later deliver the vehicle to the customer offsite.
- **Contract Signed Offsite**. A dealer can transmit a *dealer-signed* and fully completed purchase contract to the customer's home or other offsite location, have the customer sign and send the signed paperwork back to the dealership, and then deliver the vehicle to the customer offsite.

The Pandemic Offsite Memo notes that a dealer is permitted to deliver a vehicle to a customer at an off-site location to complete the sale through the licensed location and that a dealer and salesperson must comply with all sales related requirements of the Vehicle Code before, during, and after the sale of a vehicle. The Pandemic Offsite Memo goes on to specifically note the following "Compliance Requirements":

- All products must be contracted for sale prior to the delivery of the vehicle.
- All terms of the transaction must be agreed upon prior to the delivery of the vehicle at an off-site location. Negotiations may not be conducted at the purchaser's delivery location.
- All contracts must be signed by the dealership before delivery of the vehicle at the off-site location. The purchaser may sign the contract at the time of delivery.
- Any person engaged in the negotiation and sale of the vehicle must be a licensed salesperson.
- A copy of all notices to the consumer required by the Vehicle Code and the Civil Code must be provided to the purchaser before the purchaser executes all sales related documents, such as the notice of the right to inspection, etc.
- All Regulation Z disclosures must be provided to the purchaser and the purchaser must be given an opportunity to review prior to purchaser's execution of sales related documents.

[7] Vehicle Code § 11713(m)

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Prohibited offsite activities

Dealers should not permit *any* negotiating, selling, or persuading by dealership personnel involved in making offsite deliveries. Even modest efforts to persuade the customer to accept delivery and sign the contract could be considered improper offsite sales activities.

Dealers should also prohibit any offsite activity disallowed by the manufacturer. Some manufacturers may have dealer franchise agreements or incentive rules requiring customers to sign paperwork or take delivery onsite.

Essential steps to a successful offsite delivery

- All negotiations must take place on-site, over the telephone, or over the Internet. Dealership personnel should not engage in offsite person-to-person negotiations, selling, or "explaining" at any offsite location;
- Vehicle delivery and demonstration should comply with all manufacturer requirements;
- Dealers should confirm that the customer fully understands and is prepared to sign all documents before sending out documents for signature. Ideally, dealership personnel should first fax or email and review the paperwork with the customer before sending it out for signature;
- Dealers should ensure that every step of the transaction complies with all applicable elements of the dealer's identity theft prevention program;
- The contract and, where applicable, other paperwork should be signed on behalf of the dealership before being transmitted to the customer;
- All required documents should be delivered to the customer with instructions providing the proper order for signature, and as contemplated by the DMV Pandemic Offsite Memo, once the customer signs and returns the paperwork, the vehicle can be delivered. Most importantly, the customer should not sign the sale contract prior to signing all required acknowledgement and other forms—with particular attention paid to the pre-contract disclosure statement discussed in Chapter 22, co-signer notice discussed in Chapter 30, and (if applicable) the used vehicle contract cancellation option agreement discussed in Chapter 29;
- The person delivering the vehicle should not engage in any selling, persuading, or explaining. If questions do arise, the customer should be asked to telephone the dealership to discuss the matter further;
- The customer copy and disclosure presentation requirements discussed in Chapter 40 should be followed at the offsite location; and
- If the offsite delivery involves an autobroker, dealer supplies, including report of sales forms, should not be loaned to the broker.

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CHAPTER 43: FINAL CLOSING CHECKLIST

This chapter contains a checklist of a number of compliance items that should be reviewed before concluding a purchase or lease transaction.

Sample final closing checklist

Every dealer can benefit from a final closing checklist to be completed before the conclusion of a consumer lease or credit sale. A sample checklist is included below. The sample checklist does not cover *every* step required for F&I compliance, nor does it cover vehicle title and registration requirements or requirements unique to a particular franchise or dealer organization. Instead, this list is intended as a convenient reference of common requirements applicable to most sale or lease transactions.

✓ Privacy notice given with credit application*
✓ Identity checked
✓ OFAC search completed
✓ If buyer is active military or dependent
✓ Adverse action notice (for a credit turndown) or Notice of incompleteness – if applicable*
✓ Form 8300 cash report completed if required
✓ New/Used status verified
✓ Sold at advertised price if price advertised
✓ Finance income limit checked
✓ Used Car Buyers Guide conforms to deal
✓ Check for open safety recalls
✓ Certified used vehicle compliance checked*
✓ Incentive/delivery paperwork requirements met
✓ If cancellation option, verify vehicle condition
✓ Proposition 65 label
✓ Check that there is:
- No dealer rebate
- No undisclosed negative equity
- No undisclosed deferred downpayment
- No improper hold check agreement
- No trade-in payoff adjustment form
- No trade-in payoff adjustment form
- No unapproved "side agreements"
- No customer misunderstandings
- No blank spaces to be filled in

*Required even if sale/lease is not completed

✓ Secure signatures and provide customer (including a co-buyer or co-lessee where applicable) a copy of:
- Credit application
- Condition/history disclosure – if applicable
- Used vehicle safety recall status – if applicable
- Certified Pre-Owned inspection checklist – if applicable
- Menus and worksheets – if signed
- Debt cancellation agreement(s)
- Trade-in history report
- Service contract(s)
- Used Car Buyers Guide
- Aftermarket warranty disclosure – if applicable
- Factory warranty start date disclosure
- Credit score disclosure*
- Pre-contract disclosure
- Used vehicle cancellation option agreement
- Co-Signer notice and copy of all documents
- Spanish/Asian translation, completely filled in
- Contract or lease (follow customer copy rules)
- Verification of insurance
- Front plate bracket form – if applicable
- Tire chain disclosure – if applicable
- PDI form and certification for new vehicles
- Liability insurance warning – if applicable
- Odometer documentation
- Customer contact authorization
- Disclosure for vehicles with partial driving automation features – if applicable
- GAP waiver – if applicable

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Legal background

This chapter provides a final closing checklist for F&I compliance. Many of the items on the checklist are drawn from specific legal compliance areas discussed in other chapters of this manual, while others are discussed here for the first time.

Checklist contents and use

A checklist can help dealership personnel address the important F&I compliance issues in each vehicle transaction. Whether a dealer asks dealership personnel to complete a checklist every time a vehicle is sold or leased, or to simply review the checklist periodically, a policy to follow a checklist can help to demonstrate the dealer's intent to comply with the applicable laws.

The checklist provided is a model that can and should be expanded by each dealer given their own operations. For example, factory requirements may necessitate adding a number of additional items. Likewise, DMV documentation issues should be included to the extent dealership personnel handling F&I matters are also involved in processing DMV documents. A discussion of many of the checklist items follows.

Check that a GLB privacy notice was given

See Chapter 1.

Check that the customer's identity has been verified

See Chapter 2.

Check that an OFAC search has been completed

See Chapter 3.

Check if buyer is a "covered borrower" under Military Lending Act.

See Chapter 10.

Check that a Form 8300 cash report was completed if required

See Chapter 4.

Determine the vehicle's New/Used status was verified correctly

See Chapter 14.

Check that the vehicle is being sold at the advertised price (if any)

Verify that the cash price for the vehicle shown on line 1(A)(1) of the LAW RISC is the same as the advertised price, or that a statement of facts has been prepared and signed demonstrating that the line differs from the advertised price due to added accessories or services voluntarily acquired by the customer.

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Dealers must sell a vehicle at (or below) its advertised price to any purchaser during the time the advertised price is effective—even if the purchaser is unaware of the advertisement.[1]

Check finance income limits

See Chapter 16.

Check that the Used Car Buyers Guide conforms to the transaction

Check that the Used Car Buyers Guide "window sticker" conforms to the actual transaction in three ways. First, the Guide must accurately reflect the status of written warranties given with the sale. Second, the Guide must never be checked "AS IS" for a certified used vehicle. Third, the Guide must be translated into Spanish whenever the sale was conducted in Spanish.

See Chapter 21.

Check for compliance with certified used vehicle rules

See Chapter 34.

Check for open safety recalls

See Chapter 35.

Check that delivery/incentive paperwork requirements are met

New vehicle manufacturers and distributors impose general rules for delivery of all new vehicles (as well as delivery of used vehicles under some certified pre-owned programs). Most manufacturers and distributors also have a set of rules that must be followed to document eligibility for incentive programs. Dealership personnel should secure all of this documentation. If the customer must sign any type of agreement for this purpose, the customer should be provided with a copy.

If a cancellation option is provided, verify the condition of the vehicle

Because a buyer who exercises the option to cancel the purchase of a vehicle under a contract cancellation option agreement must return the vehicle in the same condition it was in when he or she took delivery, a condition report will help avoid any disputes over who is responsible for damage found on the vehicle when it is returned. See Chapters 29 and 42 for a complete discussion of the contract cancellation option agreement and the process of accepting a returned vehicle when the option is exercised.

[1] Vehicle Code § 11713.1(e)

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Proposition 65 label

California's "Proposition 65" law which was recently amended with changes to take effect August 30, 2018, requires clear and reasonable warning to employees and, in many cases, members of the public, of exposure to substances known to the State of California to cause cancer or reproductive toxicity.[2] The list of substances is very long and includes common existing items such as carbon monoxide, and chemicals used in everyday products. Placing labels on vehicles sold or leased is a crucial element of a dealer's Proposition 65 compliance program. See the CNCDA Proposition 65 Handbook for more information on this topic.[3] Below is an example of the updated Reynolds and Reynolds Proposition 65 vehicle label (LAWPROP 65-18).



ATTACH TO FRONT DRIVER SIDE WINDOW

⚠ **WARNING:** Operating, servicing and maintaining a passenger vehicle or off-road vehicle can expose you to chemicals including engine exhaust, carbon monoxide, phthalates, and lead, which are known to the State of California to cause cancer and birth defects or other reproductive harm. To minimize exposure, avoid breathing exhaust, do not idle the engine except as necessary, service your vehicle in a well-ventilated area and wear gloves or wash your hands frequently when servicing your vehicle. For more information go to www.P65Warnings.ca.gov/passenger-vehicle.

⚠ **AVISO:** El uso, servicio y mantenimiento de un vehículo de pasajeros o de un todo terreno pueden exponerlo a sustancias químicas, incluyendo los gases del escape del motor, monóxido de carbono, ftalatos y plomo, reconocidos por el Estado de California como causa de cáncer, defectos de nacimiento u otros daños del sistema reproductivo. Para minimizar la exposición, evite respirar los gases del escape, no deje el motor en punto muerto (ralentí) salvo si es necesario, dele servicio al vehículo en un área bien ventilada, y use guantes o lávese las manos con frecuencia al dar servicio al vehículo. Para obtener más información, visite www.P65Warnings.ca.gov/passenger-vehicle.

LAW FORM NO. LAWPROP65-18 (REV. 9/17) The Reynolds and Reynolds Company

Check that none of these problems are present in the deal:

- **No dealer rebate.** While factory rebates are acceptable, dealer-provided rebates, or "cash back," are not allowed.[4]
- **No undisclosed negative equity**. See Chapter 28.
- **No undisclosed deferred downpayment**. See Chapter 27.
- **No "hold check" agreement.** See Chapters 26 and 27.
- **No trade-in payoff adjustment form.** See Chapter 26.
- **No unapproved "side agreements."** If a dealer can call something a "side agreement," it needs to be reviewed and approved in advance by dealership management and legal counsel to ensure that it does not violate the single document rule. See Chapter 26.
- **No blank spaces to be filled-in on contracts or other customer/signed documents.** See Chapters 5 and 24.

Secure signatures and provide customer a copy of

- **Credit application**. See Chapter 38.
- **Condition / history disclosure – if applicable**. See Chapter 32.
- **Menus and worksheets – if signed**. See Chapter 15.

[2] 27 CCR §§ 25600-25607.7; Health and Safety Code § 25249.5 et seq.
[3] The Proposition 65 Handbook is not intended as legal advice. This handbook may be accessed by CNCDA members on CNCDA Comply (login required) at www.cncda.org
[4] Vehicle Code § 11713.1(j)

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- **Debt cancellation agreement(s)**. See Chapters 19 and 40.
- **Trade-in history report**. See Chapters 37 and 40.
- **Service contract(s)**. See Chapters 18 and 40.
- **Used Car Buyers Guide**. See Chapters 21 and 40.
- **Aftermarket warranty disclosure – if applicable**. Franchise agreements often require dealers to disclose to buyers in writing that any non-OEM aftermarket products installed on the vehicle purchased will not be covered by the manufacturer's warranty.
- **Factory warranty "start date" disclosure**. Selling a new vehicle or demonstrator without disclosing in writing to the buyer the date on which the manufacturer's warranty commenced is illegal.[5] This information is often disclosed in a form provided by the manufacturer.
- **Credit score disclosure**. See Chapter 23.
- **Pre-contract disclosure**. See Chapter 22.
- **Used vehicle cancellation option agreement**. See Chapter 29.
- **Co-Signer notice and copy of all documents**. See Chapter 30.
- **Spanish/Asian translations, completely filled-in – if applicable**. See Chapter 31.
- **Completed certified pre-owned inspection checklist.** See Chapter 34.
- **Used vehicle recall status report and acknowledgment.** See Chapter 35.
- **Contract or lease (follow customer copy rules)**. See Chapter 40.
- **Disclosure for vehicles with partial driving automation features, if applicable.** See Chapter 36.

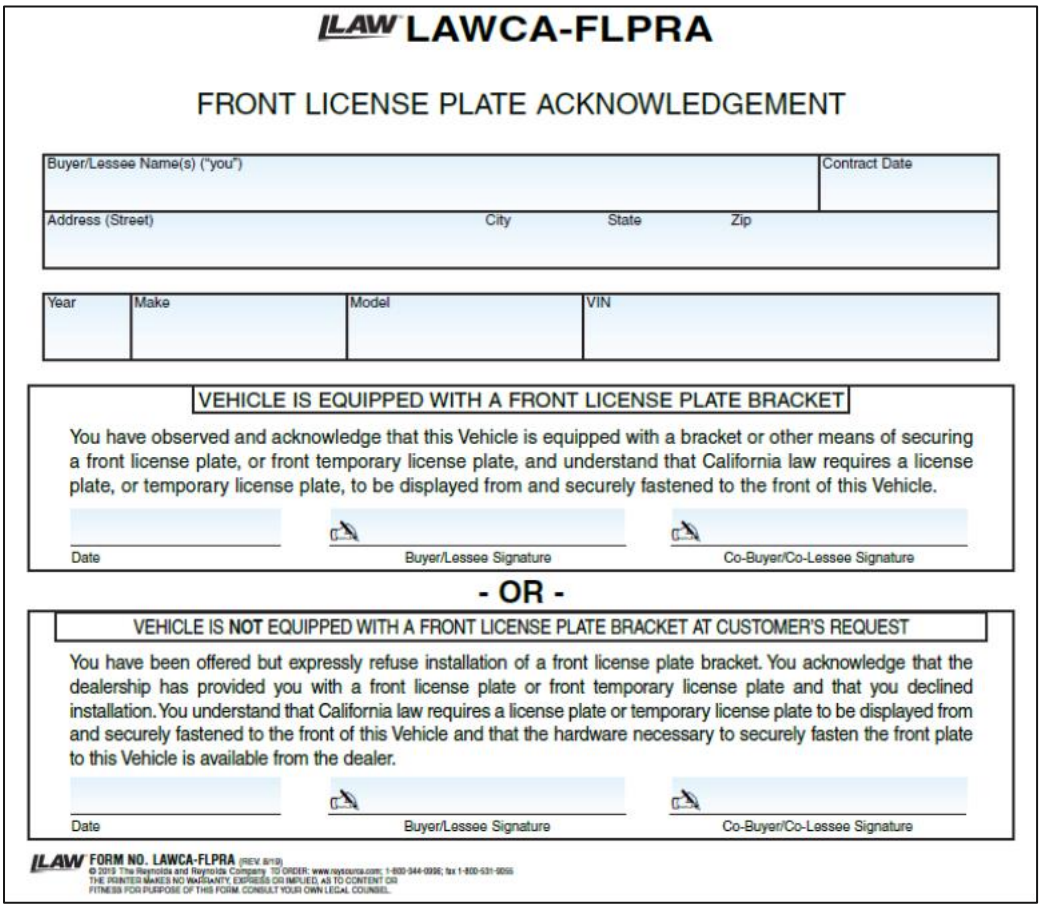
- **GAP waiver.** See Chapters 19 and 38.

- **Front plate bracket form – if applicable.** California law allows dealers to deliver a vehicle only if equipped with a bracket or other means of securing a front license plate, unless the dealer obtains a signed document from the customer acknowledging the requirement to display a front plate.[6] Reynolds and Reynolds Front License Plate Bracket Installation Refusal Acknowledgement Form (Form LAWCA-FLPRA) which follows complies with this requirement.

[5] Vehicle Code § 11713(o)
[6] Vehicle Code § 11713.17

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Example form



LAW LAWCA-FLPRA

FRONT LICENSE PLATE ACKNOWLEDGEMENT

Buyer/Lessee Name(s) ("you")			Contract Date
Address (Street)	City	State	Zip

Year	Make	Model	VIN

VEHICLE IS EQUIPPED WITH A FRONT LICENSE PLATE BRACKET

You have observed and acknowledge that this Vehicle is equipped with a bracket or other means of securing a front license plate, or front temporary license plate, and understand that California law requires a license plate, or temporary license plate, to be displayed from and securely fastened to the front of this Vehicle.

Date Buyer/Lessee Signature Co-Buyer/Co-Lessee Signature

- OR -

VEHICLE IS **NOT** EQUIPPED WITH A FRONT LICENSE PLATE BRACKET AT CUSTOMER'S REQUEST

You have been offered but expressly refuse installation of a front license plate bracket. You acknowledge that the dealership has provided you with a front license plate or front temporary license plate and that you declined installation. You understand that California law requires a license plate or temporary license plate to be displayed from and securely fastened to the front of this Vehicle and that the hardware necessary to securely fasten the front plate to this Vehicle is available from the dealer.

Date Buyer/Lessee Signature Co-Buyer/Co-Lessee Signature

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- **Tire Chain disclosure – if applicable**. California law requires dealers to disclose in writing to the buyer or lessee of a new vehicle that the vehicle, as equipped, may not be operated on a highway with tire chains, if that is stated in the owner's manual or other manufacturer materials.[7] Manufacturers are required to provide dealers with a list of all applicable vehicles at least annually, and prior to introduction of the vehicle. Reynolds and Reynolds Tire Chain Disclosure Form (Form LAWCA-365) which follows can be used to satisfy this requirement, when applicable.



TIRE CHAIN DISCLOSURE

AS EQUIPPED, THIS VEHICLE MAY NOT BE OPERATED WITH TIRE CHAINS BUT MAY ACCOMMODATE SOME OTHER TYPE OF TIRE TRACTION DEVICE. SEE THE OWNER'S MANUAL FOR DETAILS.

The undersigned acknowledges that prior to signing a contract to buy or lease the subject new vehicle, the undersigned read this disclosure and received a signed copy.

Dated: _____

(Buyer(s) Signature)
(Lessee(s) Signature)

(Co-Buyer(s) Signature)
(Co-Lessee(s) Signature)

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[7] Vehicle Code § 11713.6

- **PDI form and certification.** California law requires new car dealers, upon delivery of a new vehicle, to give customers both a copy of the manufacturer's delivery and preparation (PDI) obligations and a written certification that the dealer has fulfilled these obligations.[8] Most manufacturers provide dealers with PDI forms that include this certification.

- **Verification of Customer Insurance.** As part of the process of assigning a contract or lease, a dealer is typically obligated to provide the financing source with information about the customer's insurance policy covering the newly-acquired vehicle. Dealers should check with their financing sources to determine what forms may be required for this purpose and consult with legal counsel regarding any compliance issues relating to the use of such forms. See Chapter 36.

- **Odometer Documentation.** It should be confirmed that proper odometer paperwork is completed and that the customer is provided with a copy of each and every odometer disclosure made. For new vehicles, the odometer disclosure statement section of the report of sale must be completed and signed by both the dealer and buyer. For leases, the lessee is the person accepting the vehicle, and their signature on the odometer section of the report of sale will be required along with a limited power of attorney issued by the lessor. The limited power of attorney will only be submitted to DMV with the report of sale.

  For used vehicles, if the title is present at the time of the transaction, the disclosure must be made on the title itself and a copy of both the front and back of the title must be given to the customer (both a trade-in customer and a buyer). Secure power of attorney ("SPA") forms (such as DMV REG 262) are only to be used in situations when a title is not available for signatures because the title is held by a lienholder, the title is lost or destroyed, the transaction involves a "paperless title," or in handful of other unusual situations.

  The mileage of the vehicle as indicated by the vehicle's odometer must be disclosed, even if the mileage displayed on the odometer is known to be incorrect. However, if known to be incorrect, the appropriate box should be checked and, if the true mileage is known, it should be disclosed on a separate space on the title or SPA.

- **Customer Contact Authorization.** Upon completion of a vehicle sale or lease, dealership personnel should emphasize the dealer's intent to keep in close contact with a customer to make sure that they are satisfied with their vehicle transaction and to ensure that any questions are answered. Many communication methods (e.g., telephone, email, fax, text messaging) are significantly restricted by federal and state consumer protection laws unless a customer gives his or her written consent to be contacted by the dealer. Reynolds and Reynolds Contact Authorization Form (Form LAWCA-AUTHORIZE2) which follows is designed to document customer contact consent in the broadest manner allowed by law. If used, the form should be completed, signed and dated by the customer. A signed copy should be given to the customer and retained by the dealer.

[8] Vehicle Code § 3064(b)

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Example Form

LAWCAAUTHORIZE2
Contact Authorization

Customer Name	Co-Customer Name
Customer Phone No. (Home)	Co-Customer Phone No. (Home)
Customer Phone No. (Mobile)	Co-Customer Phone No. (Mobile)
Customer Email Address	Co-Customer Email Address

In this Contact Authorization Form, "we," "us," and "our," mean

_____,

_____.

"You" and "your" mean the Customer and Co-Customer.

As part of our effort to provide the highest possible level of service, we would like to be able to contact you in order to ensure that you are happy with your purchase, keep you informed of new product offerings and promotions, remind you of necessary maintenance or service your vehicle may need, and for other reasons.

You agree that we may monitor and record telephone calls regarding your account to assure the quality of our service or for other reasons. You agree that we may try to contact you in writing, by e-mail, or by using prerecorded/artificial voice messages, text messages and automatic telephone dialing systems, as the law allows. You also agree that we may try to contact you in these and other ways at any address or telephone number you provide us, even if the telephone number is a mobile phone number or the contact results in a charge to you.

☐ By checking this box, you also authorize us to call your home phone number and your mobile phone number provided above using an automatic telephone dialing system or a prerecorded message for sales purposes. You are not required to provide this authorization as a condition of purchasing any goods or services.

Customer Signs X	Date
Co-Customer Signs X	Date

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PART D. POST-CONTRACT ISSUES

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CHAPTER 44: BUYER'S EXERCISE OF CONTRACT CANCELLATION OPTION

This chapter discusses how to manage the return of a vehicle following a customer's exercise of the option to cancel provided for in the used vehicle contract cancellation option agreement.

Legal background

As discussed in Chapter 29, California law requires (with some exceptions) dealers to offer buyers of used vehicles the right to purchase an agreement giving an option to cancel the purchase within 2 days and return the vehicle for a full refund (used vehicle contract cancellation option agreement).[1] The law provides detailed requirements to be followed for the buyer to properly exercise the cancellation option and for the dealer to accept return of the vehicle. While dealers may provide more-flexible terms, this Chapter discussed the minimum requirements allowed by law.

Deadlines and limits for exercise

The contract cancellation option agreement provides the deadline for exercising the option (not later than close of business on the second day following purchase) and the mileage limitation (not less than 250 added miles). If a customer attempts to cancel the contract after the deadline or return the vehicle with more miles than allowed under the option agreement, the dealer is not required to accept the cancellation.

Notice of exercise

While a customer must give a written notice to exercise the cancellation option, this may be accomplished by the customer signing the notice of exercise box at the bottom of the agreement form and returning the form to the dealer.

Restocking fee

A dealer may condition the exercise of the cancellation option on payment of a restocking fee. However, the amount paid to purchase the option is deducted from the restocking fee.

- Restocking fees are also capped based on the cash price of the vehicle being sold.[2] The restocking fee caps are –
- $175 if the cash price is at or below $5,000
- $350 if the cash price is over $5,000 but at or below $10,000
- $500 if the cash price is over $10,000 but below $40,000

As discussed in Chapter 29, if proper notice is given to a buyer who exercises the cancellation option in

[1] Vehicle Code § 11713.21
[2] Vehicle Code § 11713.21(b)(4)

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connection with a lease turn-in, the restocking fee is increased by the amount that the buyer would be obligated to pay as a lessee under the terms of the lease for excess mileage, unrepaired damage and excess wear and tear.[3]

Customer's personal delivery of vehicle and other items

To exercise the option, the buyer must personally deliver the following to the selling dealer:

- Written notice exercising the right to cancel the purchase, which may take the form of a copy of the cancellation option agreement signed by the buyer in the required section for this purpose at the bottom of the form;[4]
- Any restocking fee reduced by the cancellation option purchase price;
- Original documents given by the dealer to the buyer, including the contract cancellation option agreement, the vehicle purchase contract and related documents, and all vehicle titling and registration documents; and
- The vehicle, with added miles not to exceed the mileage limitation, and in the same condition as when it was delivered, except for reasonable wear and tear and manifestations of pre-existing defects or mechanical problems not caused by the buyer.

Contracts and liens outstanding

The vehicle must be returned by the buyer free of all liens and encumbrances, other than those created by the conditional sale contract used to sell the vehicle, or any loan arranged by the dealer, or any purchase money loan obtained by the buyer from a third party. The dealer is required to cancel any conditional sale contract or dealer assisted loan.[5]

Purchase-related liens held by third parties supplying purchase money can be discharged by the dealer disbursing the refund proceeds directly to the third party on the buyer's account.

Cancelled transaction must be treated as a "Rollback"

Report of sale cannot be voided

When a customer validly exercises a contract cancellation option and returns the vehicle to the selling dealer, the transfer of title from the customer back to the dealer must be treated as a "used vehicle rollback." According to the DMV's Vehicle Industry Registration Procedures Manual, the Used Vehicle Report of Sale cannot be voided if the buyer returns the vehicle after it has been sold and delivered—even if returned before the registration or transfer application is completed.[6] Moreover, all fees due for the registration transaction must be paid within 30 days of the date of sale shown on the report of sale to avoid late penalties or administrative service fees. The

[3] Vehicle Code § 11713.21(b)(5)
[4] Vehicle Code § 11713.21(b)(8)
[5] Vehicle Code § 11713.21(c)(1)
[6] DMV Vehicle Industry Registration Procedures Manual § 11.150

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fees due may be posted in the dealer's name or the first buyer's name. The dealer may prorate and collect license fees from the second buyer of the vehicle rollback, provided the dealer returned all license fees to the first buyer.

Other rollback requirements, documents

Dealers should carefully observe other "used vehicle rollback" requirements, including requirements for completion of a Statement of Facts, Reports of Sale, odometer disclosures, transfer fees and smog certificates – all discussed in section 11.150 of the Vehicle Industry Registration Procedures Manual (accessible online at www.dmv.ca.gov, under the Publications heading).

Sales tax not owed on vehicle returned pursuant to option

California law provides that sales tax will not be owed on the sale of a vehicle if the vehicle is returned and a full refund is given to the buyer pursuant to the exercise of a used vehicle contract cancellation option.[7]

Dealer's deadline to refund

A dealer is required, no later than the second day following the day on which the option is exercised, to cancel the contract and provide a full refund.[8] The full refund need not include any portion of the cancellation option purchase price. However, any restocking fee must be reduced by the amount of the cancellation option purchase price.[9] For example, if a dealer chooses not to impose a restocking fee, none of the contract option purchase price would need to be refunded.

If the dealer received payments from third parties on the consumer's account when the vehicle was purchased (such as a credit card payment or a draft from a direct-lending credit union), those sums may be refunded directly to the third party for credit to the buyer's account.[10]

Addressing the risk of refunding uncollected funds

Exercise of the contract cancellation option can sometimes put a dealer at risk of having to refund uncollected funds. For example, a downpayment or other customer check may not have cleared the bank by the time of the refund deadline. To avoid this problem a dealer should hold customer checks until the option period expires. If the option is exercised, the customer's check can be returned directly to the customer. If not exercised, the check can be deposited with the bank. However, to avoid single document rule/deferred downpayment problems, dealership personnel should not enter into side agreements with the customers to hold checks. (See Chapter 26, Single Document Rule and Chapter 27, Deferred Downpayments.)

Immediate return of trade-in

The rule that allows the refund to be deferred until the second day following exercise of the contract cancellation option does not apply to returning the trade-in. The trade-in vehicle *must* be returned by the day following the

[7] Revenue and Taxation Code § 6012.3; Vehicle Code § 11713.21(c)(1)
[8] Vehicle Code § 11713.21(c)(1)
[9] Vehicle Code § 11713.21(b)(4)
[10] Vehicle Code § 11713.21(d)

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exercise of the option.[11] The fair market value of the trade-in (or its agreed value in the original purchase agreement, whichever is higher) may be given in lieu of its physical return *only if the dealer provided the cancellation option at no charge*.[12] In all other cases, a dealer must hold the trade-in to be ready to physically return it to the buyer if the option is exercised. The law provides exceptions to this requirement for bona fide errors.

Documenting dealer response to exercise of option

Receipts

When accepting return of a vehicle pursuant to the exercise of a contract cancellation option, dealership personnel should follow internal policies for receiving a vehicle into inventory, including issuing the customer a receipt and preparing a condition report. Similarly, dealers may wish to prepare a condition report on the trade-in vehicle and request an acknowledgement from the customer that the trade-in was returned.

Documenting acceptance or rejection of returned vehicle

Dealership personnel should document whether the dealer accepts or rejects the customer's return of the vehicle pursuant to a purported exercise of a contract cancellation option. If the dealer rejects the return of the vehicle, the reasons for that rejection should be carefully documented in writing and placed in the deal jacket (e.g., "mileage limitation exceeded by ____ miles," or "vehicle condition changed as follows: _____," etc.).

[11] Vehicle Code § 11713.21(c)(2) and (3)
[12] Vehicle Code § 11713.21(c)(2)

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CHAPTER 45: INABILITY TO ASSIGN CONTRACT OR LEASE

This chapter discusses the ability of dealers to rescind conditional sale contracts and lease agreements when financing is unavailable, and related issues.

Legal background

Contrary to a widespread but mistaken belief, there is no law allowing a dealer to rescind a retail sale or lease agreement within ten days for lack of financing. The right of a dealer to rescind for lack of financing exists only if this right is established in the sale contract or lease agreement. In other words, the right to rescind springs not from the law, but from the contract.

Having rescission rights stated in the contract or lease is not the end, however, but just the beginning. Dealers must fully understand how and when they may implement this cancellation right, and at all times should exercise care in doing so.

Ten-day rescission right in retail contracts

The right to rescind is preprinted in the LAW RISC and other conditional sale contract forms.

Terms and conditions of seller's right to rescind

The terms and conditions of the right to rescind which are written in plain, non-legalistic language are contained on the reverse side of the LAW RISC in the section entitled "Seller's Right to Cancel."

DEALER TIP: BE FAMILIAR WITH SELLER'S RIGHT TO CANCEL LANGUAGE
Dealership personnel should review the terms of the Seller's Right to Cancel language and become familiar with them.

Seller's Right to Cancel

a. Seller agrees to deliver the vehicle to you on the date this contract is signed by Seller and you. You understand that it may take some time for Seller to verify your credit and assign the contract. You agree that if Seller is unable to assign the contract to any one of the financial institutions with whom Seller regularly does business under an assignment acceptable to Seller, Seller may cancel the contract.

b. Seller shall give you written notice (or in any other manner in which actual notice is given to you) within 10 days of the date this contract is signed if Seller elects to cancel. Upon receipt of such notice, you must immediately return the vehicle to Seller in the same condition as when sold, reasonable wear and tear excepted. Seller must give back to you all consideration received by Seller, including any trade-in vehicle.

c. If you do not immediately return the vehicle, you shall be liable for all expenses incurred by Seller in taking the vehicle from you, including reasonable attorney's fees.

d. While the vehicle is in your possession, all terms of the contract, including those relating to use of the vehicle and insurance for the vehicle, shall be in full force and you shall assume all risk of loss or damage to the vehicle. You must pay all reasonable costs for repair of any damage to the vehicle until the vehicle is returned to Seller.

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Customer must sign in "Seller's Right to Cancel" box

It is imperative that the buyer and any co-buyer sign the Seller's Right to Cancel box on the front side of the retail contract.

SELLER'S RIGHT TO CANCEL If Buyer and Co-Buyer sign here, the provisions of the Seller's Right to Cancel section on the back giving the Seller the right to cancel if Seller is unable to assign this contract to a financial institution will apply.

Buyer X _____ **Co-Buyer X** _____

If the buyer and any co-buyer do not sign this provision, the Seller's Right to Cancel section on the back of the contact will not apply, and the dealer will therefore not have the right to rescind the contract for lack of financing.

Ten-day rescission right in lease contracts

Most lease forms used in California do not contain rescission rights in favor of the dealer. Unless such language is added to the lease, a dealer will have no right to rescind the lease for lack of financing. The ready solution is to insert such language in the blank lease box contained in all lease forms.

Adding rescission rights language to lease box

The following is an example of language which can be inserted into the blank lease box to secure the 10-day rescission right.

For Trade-in, Turn-in, and other individualized agreements

Lessee agrees that if this lease cannot be assigned by Lessor to a financial institution with whom it regularly does business on terms acceptable to Lessor, and Lessor gives notice to Lessee within 10 days, this Lease will be rescinded. Lessee must then return the vehicle to Lessor in good condition and Lessor will then return all consideration paid.

By:_____ By:_____
Lessee Lessee

The language added to the lease box should be printed in at least 8-point type.[1] Although not required by law, dealership personnel should ask the lessee to sign or initial adjacent to the added language.

Implementing the ten-day rescission right

The dealer's exercise of the ten-day rescission right is a step-by-step process, requiring the dealer's timely and appropriate implementation of each step – starting with the initial determination that financing cannot be obtained, followed by timely delivery of the notice of rescission to the customer, the return of the vehicle by the customer in exchange for the consideration he or she paid, and ending with the proper documentation of the process. Before starting the process, each step should be reviewed to ensure the dealer is able to fully comply with the rescission requirements. For example, before sending a rescission notice, dealership personnel should confirm that the trade-in vehicle is in the dealer's possession in order to comply with the fifth step, as discussed below.

[1] Civil Code § 2985.8(a)

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1st Step – Determining that financing cannot be obtained

The decision to rescind a contract for lack of financing is driven by the dealer's determination that financing for the contract, as written, cannot be obtained within the allowable ten days. This determination can be made difficult or confusing when the bank or finance company responds with a "conditional" approval (see discussion below) or indicates it will finance the contract if provided with an appropriate "stipulation" as to the customer's income (e.g., by providing a pay stub) or address (e.g., by providing a utility bill). A conditional approval is *not* final approval for financing purposes, and dealers should never allow the ten-day limit to expire based on the false belief that financing was approved.

Conditional Approval is Not Approval. Many times a bank or finance company will notify a dealer that financing is approved, conditioned upon some revision to a term in the contract (perhaps a larger downpayment or a revised APR). The use of the word "approval" by the bank or finance company is misleading in this situation. When the approval is conditioned as such, the original contract as written was *rejected*, and therefore the dealer has not yet obtained financing for that contract. In that situation, the dealer should consider sending a notice of rescission before the expiration of the ten-day limit—otherwise the dealer may be forced to hold the paper.

Chasing Stips. In some instances, the bank or finance company will approve the contract conditioned upon receipt of proof of income or residence – often times referred to as a "stipulation." This form of conditional approval is not actual approval of the contract. If the required stipulation is not obtained from the customer and given to the bank or finance company by the 10th day, the dealer must give notice of rescission at that point or lose that right entirely.

Only Unqualified Approval Counts. The only way a dealer can be certain that financing for a contract has been obtained is when the dealer receives unqualified or unconditional approval from the bank or financing company for the contract as written. Any condition attached to the "approval," whether in the form of a revision to the contract as written or in the form of a required stipulation, means that financing has not yet been obtained.

Failure to provide a notice of rescission by day 10 unless unconditional approval has been obtained puts the dealer at risk of being forced to maintain and collect payments under the contract until the end of the contract term.

2nd Step – Using the correct form of written notice

Once a dealer has made the determination that financing cannot be obtained by the 10th day, the dealer is then required to give notice of rescission to the customer, unless the dealer decides to carry the contract.

Written Notice. Although the "right to cancel" language on the back of the retail contract (and the recommended lease box language for lease agreements) does not necessarily require the notice of rescission to be in writing, dealers should always provide the notice in written form. A written notice gives the dealer evidence that the notice was in fact given to the customer if needed – for example, if a lawsuit is later filed.

Notice to co-signers. If the retail contract has a co-buyer, or a lease has a co-lessee, then the notice needs to be sent to the co-buyer/co-lessee in addition to the buyer/lessee.

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Language of Notice Should Be Unequivocal.

The language contained in the written notice of rescission should not be qualified, diluted or equivocal. A rescission notice is used to document a legal act and should be treated accordingly. For example, rescission notices should avoid phrases such as "It looks like we may have trouble getting you financed…," or "We may have to decide to rescind your contract…," or "Come on in and let's talk about your financing situation…" Such language will probably not be sufficient in a court of law to constitute a legal notice of rescission. Instead, the language of the written notice should affirmatively state that financing cannot be obtained and that the contract is therefore rescinded. The Reynolds and Reynolds Notice of Contract Cancellation Form (Form LAWCA-NEREX) which follows is a good example of a written notice of rescission to be used when cancelling a conditional sale contract.

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Example conditional sale contract rescission notice

LAW LAWCA-NEREX

NOTICE OF CONTRACT CANCELATION
(Retail Installment Sale Contract)

Buyer Name(s) ("you")					Today's Date
Address Street		City	State	Zip	Contract Date
Dealership					

Year	Make	Model	VIN

Please take notice that we hereby elect to cancel the retail installment sale contract entered into between you and us in connection with your purchase of the Vehicle. We are canceling the contract because we were unable to assign the contract to any one of the financial institutions with whom we regularly do business under an assignment acceptable to us. For your reference, our right to cancel the contract is contained in the "Seller's Right to Cancel" section on the reverse side of the contract.

By virtue of our cancelation of the contract, you are now required under the terms of the contract to immediately return the Vehicle to us in the same condition it was in at the time of purchase, reasonable wear and tear excepted. Upon your return of the Vehicle to us, we will give back to you all consideration you have paid to us for the Vehicle.

Please contact the named representative below at the telephone number provided as soon as possible to make arrangements for the immediate return of the Vehicle to the dealership.

Dealer Representative's Printed Name

Date

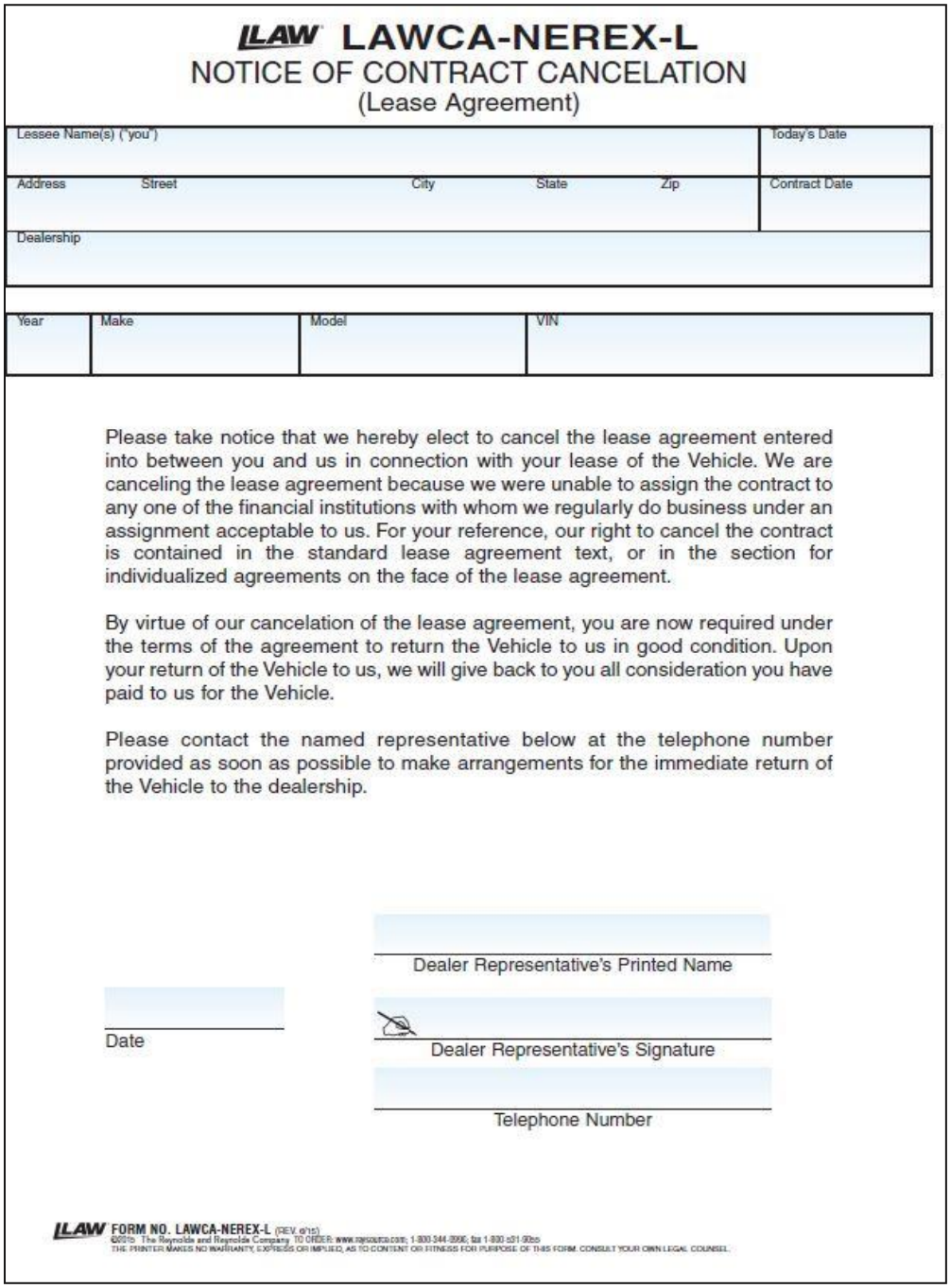
Dealer Representative's Signature

Telephone Number

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The Reynolds and Reynolds Notice of Contract Cancellation Form (Form LAWCA-NEREX-L) which follows is a good example of a written notice of rescission to be used when cancelling a lease agreement.

Example lease agreement rescission notice



LAW LAWCA-NEREX-L

NOTICE OF CONTRACT CANCELATION

(Lease Agreement)

Lessee Name(s) ("you")					Today's Date
Address Street		City	State	Zip	Contract Date
Dealership					

Year	Make	Model	VIN

Please take notice that we hereby elect to cancel the lease agreement entered into between you and us in connection with your lease of the Vehicle. We are canceling the lease agreement because we were unable to assign the contract to any one of the financial institutions with whom we regularly do business under an assignment acceptable to us. For your reference, our right to cancel the contract is contained in the standard lease agreement text, or in the section for individualized agreements on the face of the lease agreement.

By virtue of our cancelation of the lease agreement, you are now required under the terms of the agreement to return the Vehicle to us in good condition. Upon your return of the Vehicle to us, we will give back to you all consideration you have paid to us for the Vehicle.

Please contact the named representative below at the telephone number provided as soon as possible to make arrangements for the immediate return of the Vehicle to the dealership.

Dealer Representative's Printed Name

Date

Dealer Representative's Signature

Telephone Number

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Caution: translation of notice may *also* be required. If dealership personnel negotiated the deal with the customer primarily in Spanish, Chinese, Korean, Vietnamese, or Tagalog and the customer was given a translation of his or her contract or lease in that foreign language, then the notice of rescission must be sent not only in English, but also in that foreign language. Failure by a dealer to send *both* the English *and* the foreign language translation of the notice could be a violation of California law. (See discussion in Chapter 31 of Spanish and Asian language translations.)

Keep a copy in the file. Once the written notice of rescission has been prepared, signed and sent out (see below for more detailed discussion on sending the notice), a copy of the signed notice – together with a copy of any translation of the notice – should be kept in the customer's deal jacket. Failure to keep a copy of the notice will make proving that the notice was sent difficult if that becomes necessary.

3rd Step – Timing – send notice by 10th day

The retail contract rescission rights language (and the lease rescission rights language assuming it has been added to the lease box) is clear that the notice of rescission must be provided to the customer no later than the 10th day after the contract is signed. This 10-day deadline is absolute; no exceptions apply. There are no exceptions for weekends or holidays. If a dealer waits until the 11th day after the contract is signed to give a rescission notice, the dealer will be too late, and the rescission will be ineffective. In the case of personal delivery of the rescission notice to the customer, this means actually delivering the notice to the customer by the 10th day. In the case of delivery by mail, there is strong legal support that the written notice may be deposited in the mail by the 10th day as discussed below.[2]

4th Step – Method of sending notice

The rescission rights language is typically silent as to what method of delivery must be used. Under California law, any commercially reasonable means of delivering legal notices is generally deemed acceptable. This means that personal delivery, certified mail and regular mail are all acceptable ways to send the notice of rescission to a customer. As discussed below, however, personal delivery and certified mail have shortcomings. Therefore, regular mail is probably the best manner for dealership personnel to deliver a rescission notice, though dealerships should consider sending the notice electronically as well.

Personal delivery. Personal delivery of the written notice to the customer by the 10th day is acceptable. The problem is that the person assigned the task of personal delivery by a dealer would have to know exactly where the customer is at any particular point during the day in order to complete personal delivery. For this reason personal delivery is inadvisable.

Certified mail. Certified mail is a legally accepted way to give the notice of rescission, but it is problematic in that actual delivery of notice to the customer is unpredictable and uncertain. For example, the post office will not deliver the certified mailing to the customer unless the customer is actually at home to sign for delivery. A delivery problem is therefore likely to occur if the customer is at work during the business week. Also, even if the customer happens to be at home when the mail carrier arrives, the customer may refuse delivery. In either

[2] Palo Alto Town & Country Village v. BBTC Company (1974) 11 Cal. 3d 494

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event, the notice will not have been delivered, and the unsigned receipt which is returned to the dealer will be the customer's proof that he or she never received the notice. As a practical matter, certified mail will only be considered effective (retroactive to the date of mailing) if a dealer receives the signed proof of receipt back from the Post Office.

Regular mail. First class, United States mail (regular postage stamp) is also an acceptable form of delivery, and is preferable to personal delivery or certified mail. If regular mail is to be used, a dealer should keep some form of proof of mailing for the deal jacket. This could take the form of either (i) a photocopy of the outside of the envelope (in which the notice is contained) reflecting the customer's name, correct address, and the correct date stamped by the dealer's postage machine; or (ii) a certified "proof of mailing' receipt available from a post office if the sealed and posted envelope is hand delivered to the post office for mailing. As discussed previously, delivery of the notice of rescission by regular mail should be considered effective as of the date of mailing.

E-mail or Text Message. Providing the notice electronically, either via e-mail or text message, has significant benefits. Both produce a digital receipt showing when the notice was sent to the customer, which provides strong evidence to counter any claim that notice was not timely provided or received. Additionally, sending notice electronically has no cost, as opposed to the postage fees required for sending notice via certified mail. However, relying on this method alone is risky, as the consumer may provide an incorrect email address or cell phone number, or there could be clerical errors entering this information into the dealership's computer system. Accordingly, if a dealership wishes to provide electronic notice, it is strongly recommended that it send notice via regular mail as well.

5th Step – Unwinding the deal

The proper and timely delivery of the notice constitutes the rescission of the contract or lease. At that point, the deal should be unwound.

Return of vehicle to dealer. Once the notice is properly and timely sent by the dealer, the customer becomes legally obligated to return the vehicle to the dealer. Although no time is specified in the contract, the customer should return the vehicle to the dealership within a reasonably prompt period of time.

Repossession. If the customer fails or refuses to return the vehicle to the dealer and remains uncooperative, the dealer has the right to recover the vehicle either through self-help repossession or by retaining legal counsel to file a lawsuit. If the dealer decides to use self-help repossession, the dealer should always retain a reputable and licensed repossession agency for that purpose.

DEALER TIP: HOLD ON TO TRADE-INS
Dealership personnel should never sell a trade-in on a deal until the deal is actually funded.

Return of consideration to customer. When the customer returns the vehicle to the dealer, the dealer will be required to return to the customer any consideration paid by the customer under the contract or lease. This would include any downpayment or deferred downpayment paid by the customer and any trade-in vehicle given by the customer as part of the transaction.

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Damage to vehicle. The customer is responsible to reimburse the dealer for any damage to the vehicle upon its return, except for reasonable wear and tear. If the customer returns the vehicle in a damaged state, the dealer should take photographs of the damage and document the damage with a detailed condition report and estimated repair order.

Dealer's right of offset. Upon unwinding the deal, if the customer owes any sum or sums to the dealer because of repossession fees, trade-in lien payoffs, or damage to the returned vehicle, the dealer can offset those sums against the downpayment the dealer would normally return to the customer. Such amounts owed should be meticulously documented by the dealer.

Take for example, the situation where after a dealer has properly and timely sent notice of rescission, the customer returns the vehicle with $3,000 in damage. If the customer has made a $4,000 downpayment, the dealer should document the vehicle damage and return $1,000 to the customer. This result is based on the dealer being entitled to offset the repair cost from the downpayment that the dealer would otherwise be obligated to return to the customer.

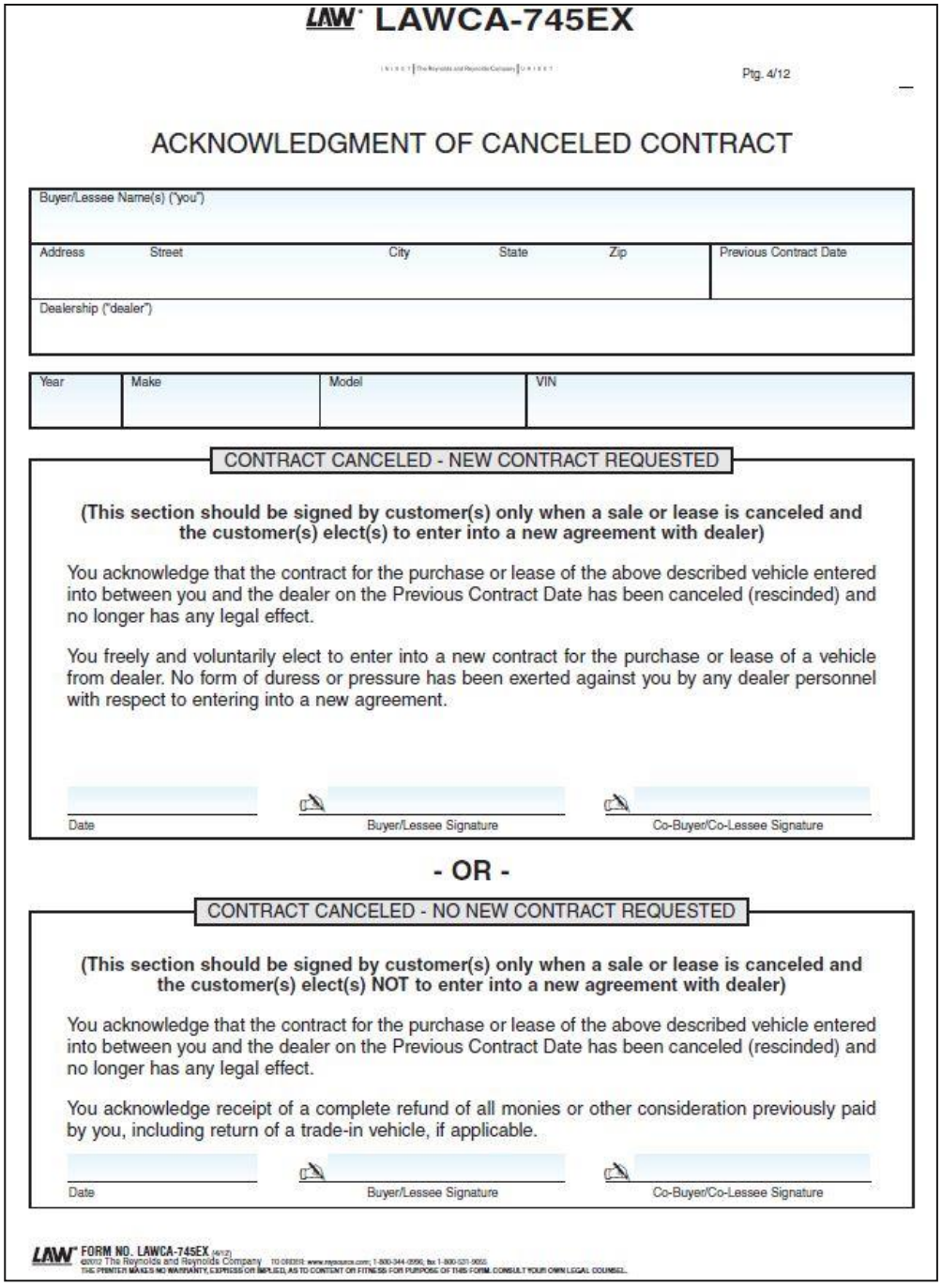
6th Step – Documenting the rescission

Although the dealer's timely sending of the notice of rescission is all that is needed to legally rescind the contract or lease, it is a good practice to have the customer sign a written acknowledgement to that effect when he or she returns the vehicle.

Acknowledgement of Contract Rescission. Reynolds and Reynolds Acknowledgement of Canceled Contract Form (Form LAWCA-745EX) can be used for this purpose. The form, shown on the following page, is designed to document two scenarios that arise when there is an inability to secure financing. The first scenario, rescission and refund, is addressed in the CONTRACT CANCELED – NO NEW CONTRACT REQUESTED box shown at the bottom of the form. The CONTRACT CANCELED - NEW CONTRACT REQUESTED box shown in the middle of the form is for a second scenario that involves a new contract for the same vehicle. This scenario is discussed later in this chapter.

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Example form



LAW LAWCA-745EX

Ptg. 4/12

ACKNOWLEDGMENT OF CANCELED CONTRACT

Buyer/Lessee Name(s) ("you")

Address | Street | City | State | Zip | Previous Contract Date

Dealership ("dealer")

Year | Make | Model | VIN

CONTRACT CANCELED - NEW CONTRACT REQUESTED

(This section should be signed by customer(s) only when a sale or lease is canceled and the customer(s) elect(s) to enter into a new agreement with dealer)

You acknowledge that the contract for the purchase or lease of the above described vehicle entered into between you and the dealer on the Previous Contract Date has been canceled (rescinded) and no longer has any legal effect.

You freely and voluntarily elect to enter into a new contract for the purchase or lease of a vehicle from dealer. No form of duress or pressure has been exerted against you by any dealer personnel with respect to entering into a new agreement.

Date | Buyer/Lessee Signature | Co-Buyer/Co-Lessee Signature

- OR -

CONTRACT CANCELED - NO NEW CONTRACT REQUESTED

(This section should be signed by customer(s) only when a sale or lease is canceled and the customer(s) elect(s) NOT to enter into a new agreement with dealer)

You acknowledge that the contract for the purchase or lease of the above described vehicle entered into between you and the dealer on the Previous Contract Date has been canceled (rescinded) and no longer has any legal effect.

You acknowledge receipt of a complete refund of all monies or other consideration previously paid by you, including return of a trade-in vehicle, if applicable.

Date | Buyer/Lessee Signature | Co-Buyer/Co-Lessee Signature

LAW FORM NO. LAWCA-745EX (4/12) ©2012 The Reynolds and Reynolds Company

In the case of rescission and refund, the buyer and any co-buyer (or lessee and any co-lessee) should sign the CONTRACT CANCELED – NO NEW CONTRACT REQUESTED box of the example form to confirm rescission of the contract. The dealer should have returned to the customer all consideration paid by the customer under the rescinded contract. The dealer should give a copy of this form to the customer and retain another copy for the deal jacket. If the customer refuses to sign this document or dealership personnel neglect to get it signed, the

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dealer's rescission of the contract or lease nonetheless remains legal. The best approach in this case is to include a note in the file explaining why a signed acknowledgement was not obtained.

Financing approved after notice of rescission sent

What happens if the bank or finance company ultimately decides to finance the contract or lease as written – but after the dealer has sent out the notice of rescission? The answer depends on the attitude of the customer, i.e., whether he or she wants to keep the deal or not.

Customer wants to keep deal.

If the dealer notifies the customer of finance approval after the notice of rescission is sent out, and the customer wants to keep the deal, the dealer may consider revoking the notice of rescission by providing an appropriate letter of revocation to the customer. The following is an example of a letter of revocation:

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[DEALERSHIP LETTERHEAD]
-DATE-

_____
_____

Re: NOTICE OF RESCISSION
[INSERT YEAR, MAKE, MODEL AND VIN]

Dear _____:

On _____, 2023, we sent you a Notice of Contract Cancellation notifying you that your [contract/lease] was being rescinded because we could not obtain financing on terms acceptable to us.

Thereafter, we were notified by _____ (bank) that financing for your [contract/lease] had been approved, and we then notified you of that financing approval. This is to confirm that you have agreed to accept the financing approval and the [contract/lease] that you signed.

Accordingly, we hereby revoke the Notice of Contract Cancellation we previously sent to you.

You will soon be receiving a letter from the bank regarding your monthly payments under your [contract/lease]. Please do not hesitate to call us if you have any questions or comments in the meantime.

Very Truly Yours,
NAME OF DEALERSHIP

I acknowledge that the Notice of Contract Cancellation is revoked, and affirm that I want to retain the above-referenced vehicle subject to the terms of the [contract/lease].

Customer Name: _____

Customer Signature: _____

Date:_____

Alternatively, the dealer may document the deal as being cancelled and enter into a new contract with the customer following the steps discussed below regarding signing a "second contract" after notice of rescission.

Customer does not want to keep the deal

A dealer needs to remember that the sending of the notice of rescission legally rescinds the contract or lease. Accordingly, if the customer is intent on going through with the rescission and returning the vehicle, he or she cannot be forced to stay in the deal. In fact, if the customer asks whether or not he or she must accept the financing and contract, the customer should be told that their legal obligation at that point is to return the vehicle in the same condition as delivered, per the notice of rescission.

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Signing a second contract after notice of rescission

Customer is not obligated to sign second contract. Because the first contract has already been rescinded, the customer is under no further obligation to the dealer – other than the obligation to return the vehicle per the notice of rescission. In other words, the customer is under no obligation at all to sign a second contract – though he or she would be free to do so if an acceptable deal can be reached. If the customer should ask at any time during the negotiations whether he or she is required to sign a second contract, the customer should be told that the signing of a second contract is optional and voluntary, not mandatory.

Proof of voluntary nature of rewrite. The customer's election to sign a second contract must be voluntary to be legal under California law. Dealers should document the voluntary nature of that decision by using a form such as the LAW Form 745-EX, Acknowledgement of Cancelled Contract, shown and discussed previously. Specifically, the form's CANCELED CONTRACT – NEW CONTRACT REQUESTED box should be signed by the customer and any co-buyer or co-lessee.

DO NOT BACKDATE THE CONTRACT.

No backdating of second contract. Regulation Z requires a contract's APR to be calculated and disclosed in a very specific manner, and fixes the date of the actual contract signing as the date finance charges must be deemed to accrue. As a result, backdating the second contract between customer and dealer will cause the APR calculation to be incorrect. Therefore, the contract should not be backdated. For example, if the original contract is dated August 1, but is rescinded pursuant to the dealer's notice of rescission, and the customer and the dealer reach a deal on the second contract on August 17, then the second contract should be dated August 17, not August 1. Although there have been differing opinions from California courts as to whether backdating is always a violation of federal law and the ASFA, the conservative approach for dealers is not to engage in this practice, as it may lead to liability on several grounds.[3]

Vehicle shown as "new." Under the Vehicle Code, a vehicle is deemed "used" once it has been registered or sold.[4] Thus, any subsequent sale of a financing unwind must be sold as "used." However, as recognized by the DMV, if the "rewritten" contract applies to the same vehicle and the same buyer(s), the rewritten contract may show the vehicle to be sold as "new," since this accurately reports that the vehicle was in fact sold as "new" to original buyer(s).[5] If a co-buyer or co-lessee who was *not* a party to the first contract is added to the second contract, the vehicle must be shown as "used" and is considered a "rollback" by the DMV.

Statement of facts for rollback vehicles. According to the DMV's Vehicle Industry Registration Procedures Manual, as part of the required documentation for a "rollback" vehicle, a dealer should prepare a Statement of Facts (REG 256) which includes the following:[6]

- The name of the buyer who returned the vehicle and the date of return.

[3] Raceway Ford Cases (2016) 2 Cal. 5th 161; Nelson V. Pearson Ford Co. (2010) 186 Cal. App. 4th 983
[4] Vehicle Code §§ 430 and 665
[5] DMV Vehicle Industry Registration Procedures Manual § 6.035
[6] DMV Vehicle Industry Registration Procedures Manual §§ 6.035 and 11.150

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- The reason the vehicle was returned which should always be stated in these cases to be "first contract rescinded for lack of financing" or words to that effect.
- Whether the buyer voluntarily returned the vehicle.
- How the vehicle was originally sold (e.g., under a contract of conditional sale).
- Whether a trade-in was returned to the buyer.
- Whether a downpayment was returned and whether it was a cash downpayment or cash in addition to a trade-in.

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Example form

The Reynolds and Reynolds Statement of Facts (Form LAWCA-229U) which follows is an example statement of facts that can be used in a "rollback" situation.

LAW LAWCA-229U

STATEMENT OF FACTS

Complete the appropriate section(s) in full (including vehicle description) and sign Section H.

LICENSE PLATE/CF NUMBER	VEHICLE/VESSEL ID NUMBER	YEAR/MAKE

A. STATEMENT FOR USE TAX EXEMPTION

This transfer is exempt from use tax because it is a:

- ☐ Family transfer sold between a parent, child, grandparent, grandchild, spouse, domestic partner, or siblings (if both are minors related by blood or adoption.)
- ☐ Addition or deletion of family member (spouse, domestic partner, parent[s], son/daughter, grandparents, grandchildren).
- ☐ Gift (does not include vehicles traded between individuals, transfer of contracts or other valuable consideration).
- ☐ Court Order ☐ Inheritance

NOTE: The Use Tax Exemption cannot be claimed if the vehicle/vessel being transferred was purchased from an otherwise qualifying relative who is engaged in the business of selling the same type of vehicle/vessel.

The current market value is: $ _____ .

B. STATEMENT FOR SMOG EXEMPTION

The vehicle does not require a smog certification for transfer of ownership because:

- ☐ The last smog certification was obtained within the last 90 days.
- ☐ It is powered by: ☐ electricity ☐ diesel ☐ Other .
- ☐ It is located outside the State of California. (Exception: Nevada and Mexico)
- ☐ It is being transferred from/between:
  - ☐ The parent, grandparent, child, grandchild, brother, sister, spouse, or domestic partner (as defined in Family Code §297) of the transferee.*
  - ☐ A sole proprietorship to the proprietor as owner.*
  - ☐ Companies whose principal business is leasing vehicles. There is no change in lessee or operator.*
  - ☐ Lessor and lessee of vehicle, and no change in the lessee or operator of the vehicle.*
  - ☐ Lessor and person who has been lessee's operator of the vehicle for at least one year.*
  - ☐ Individual(s) being added as registered owner(s).*

* Does not require smog certification unless Biennial Smog is required.

C. STATEMENT FOR TRANSFER ONLY OR TITLE ONLY

This vehicle has not been used or parked on a street or highway or off-highway. I am applying for a:

☐ **Transfer Only** ☐ **Title Only**

The vehicle is not currently registered. It has not been driven, moved, towed, or left standing on any California public highway to cause registration fees to become due. It was not transported over any California public highway or operated within California to cause off-highway fees to become due. Appropriate registration will be obtained before the vehicle is operated.

D. WINDOW DECAL FOR WHEELCHAIR LIFT OR WHEELCHAIR CARRIER

Enter your Disabled Person License Plate, or Disabled Veteran License Plate, or Permanent Disabled Person Parking Placard number below:

DISABLED PERSON PLATE	DISABLED VETERAN PLATE	PERMANENT DISABLED PERSON PLACARD

The vehicle to which my Window Decal will be affixed is:

LICENSE NUMBER	VEHICLE MAKE	VEHICLE ID NUMBER

MAIL TO:

NAME

ADDRESS

CITY STATE ZIP

REG 256 (REV. 8/2008) WWW

(Continued on reverse side)

LAW LAWCA-229U (REV. 8/08)

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STATEMENT OF FACTS

Complete the appropriate section(s) in full (including vehicle description) and sign Section H.

LICENSE PLATE/CF NUMBER	VEHICLE/VESSEL ID NUMBER	YEAR/MAKE

E. STATEMENT FOR VEHICLE BODY CHANGE (OWNERSHIP CERTIFICATE REQUIRED)

The current market value of the vehicle or vessel is: $_____.

Changes were made at a cost of $_____ on this date _____.

This is what I changed: ***Check all that apply:***

- ☐ Unladen Weight changed because _____(Public Weighmaster Certificate is required. Exception: Trailers)
- ☐ Motive Power changed from _____ to _____.
- ☐ Body Type changed from _____ to _____.
- ☐ Number of Axles changed from _____ to _____.

F. NAME STATEMENT (OWNERSHIP CERTIFICATE REQUIRED)

Please print

☐ I, _____ and _____ are one and the same person.

☐ My name is misspelled. Please correct it to: _____

☐ I am changing my name from _____ to _____

G. STATEMENT OF FACTS

I, the undersigned, state:

ROLLBACK REGISTRATION STATEMENT: This vehicle has been returned from the buyer (Customer) to the dealership and the sale/lease has been canceled.

Name of Person Returning Vehicle: _____ Return Date: _____

The vehicle was returned for the following reason:
O Credit Unavailable; O Mutual Agreement; O Other: _____

The vehicle return was: O Voluntary; O Involuntary.

This vehicle was delivered to Customer pursuant to a:
O Retail Installment Sale Contract/Conditional Sale Contract; O Cash Purchase Order;
O Lease Agreement.

This transaction involved a trade-in vehicle: O Yes; O No.
If yes:
O The trade-in vehicle was returned to Customer.
O The trade-in vehicle was NOT returned to Customer.

Customer made downpayment: O Yes; O No.
If yes, downpayment was in the form of (check all that apply):
O Cash; O Check(s); O Trade-in equity; O Other: _____
O The downpayment was returned to the Customer.
O The downpayment was NOT returned/credited to the Customer.

H. APPLICANT'S SIGNATURE

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

PRINTED LAST NAME	FIRST NAME	MIDDLE NAME	DAYTIME PHONE NUMBER
			( )

SIGNATURE DATE

X

LAW LAWCA-229U (REV. 9/08) REG 256 (REV. 8/2008) WWW
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New 10-day period starts. Dealers need to be aware that once a second contract is signed by a dealer and a customer, the 10-day period for giving a notice of rescission based upon lack of financing starts anew.

Signing a second contract before the 10th day

If a dealer learns on the 3rd day after a contract is signed that the bank will finance the deal, but only if the original contract is revised (e.g., to increase the downpayment or modify the APR) should the dealer send out a notice of rescission and then later attempt to negotiate a second contract with the customer? Alternatively in this situation, can the dealer "pre-empt" the notice of rescission by calling in the customer right away to negotiate a second contract?

The answer to these questions is that a dealer is permitted to contact the customer prior to sending a notice of rescission to discuss the financing issues and to negotiate a second contract which will qualify for financing.

However, it is very important that dealership personnel exercise extreme care in this process, and avoid any statement or suggestion that the customer is required to sign a second contract.

Customer under no obligation to sign second contract

The first contract or lease remains valid and enforceable during the negotiations for a second contract. The law provides that it is an unfair and illegal business practice for a dealer to require the customer to change that contract. Therefore, it is imperative that the customer understand that he or she is under no obligation to sign a second contract and can keep the original contract or lease.

DEALER TIP: REGARDING CUSTOMER SIGNING SECOND CONTRACT
Dealership personnel should not attempt to mislead or confuse the customer on this point. If the customer asks whether he or she is required to rescind the first contract and sign a second contract within the first 10 days (before a notice of rescission is given), the customer must be told that he or she is under no such obligation.

Any willingness on the part of the customer to agree to rescind or cancel the first contract and sign a second contract must be completely voluntary.

To the extent a customer is misled into believing that he or she must rescind the first contract and sign the second contract, the dealer will be in breach of the original contract and in violation of several consumer protection laws that govern such transactions.

Acknowledgement of rescinded contract

If the dealer and customer mutually decide to rescind the first contract and sign a second contract, this decision should be documented for the dealer's files by using a form such as the example Acknowledgement of Canceled Contract form shown and discussed earlier in this chapter. In this situation, the form's CONTRACT CANCELED – NEW CONTRACT REQUESTED box should be signed by the customer and any co-buyer or co-lessee. Once this

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form has been filled out and signed, one copy should be provided to the customer, and one copy should retained by the dealer in the customer's deal jacket.

No backdating of second contract

As with all contracts signed after a notice of rescission is sent out, a second contract signed in these circumstances should not be backdated, but dated the actual date signed by the customer and dealer.

Customer default for false credit information

Deals sometimes cannot be assigned by dealers because the customer gave inaccurate credit information. Almost all contract and lease forms require the customer to give accurate credit information in the credit application.

If information in the credit application is substantially incorrect and concerns an important item affecting creditworthiness (and this inaccuracy can be documented), the dealer may declare the contract or lease in default based on the inaccuracy of the information provided by the customer. This default can be declared irrespective of the right of rescission and outside of the 10-day time deadline for the notice of rescission. However, a significant delay in pursuing such a default could undermine the dealer's legal position.

Assuming the contract or lease has not yet been assigned, a default for providing false credit information, just as a payment default, gives the dealer the right to repossess the vehicle, sell it, apply the sale proceeds toward the outstanding contract balance, and pursue the customer for any remaining deficiency balance. Dealers should contact legal counsel to discuss how to assert these rights in a legally compliant manner.

Other legal authority authorizing rescission

Although the terms of the contract, not the law, provide the dealer with the 10-day right to rescind, both dealer and buyer are afforded certain rights under California law to rescind a contract on grounds of fraud, duress, menace, undue influence, prejudice to the public interest, and, under highly unusual facts, a serious mistake concerning the contract made by one or more of the parties.[7] A dealer seeking to rely on any of these alternative grounds for rescission must act quickly and consult legal counsel to protect and preserve all legal rights.

Correcting contract mistakes

Sometimes the inability to assign the contract is due to a typographical mistake or other error. Both ASFA and TILA provide a means to correct bona fide errors.[8] Corrections that would increase the amount of the obligation, payment terms, or other substantive aspects of the transaction cannot be made without the customer's written consent. In addition, any correction must be made within the later of 30 days from the date of contract or 20 days from the date the contract is assigned to a finance source. Even a timely correction that would not increase the customer's obligations should be made only after consulting with legal counsel because ASFA and TILA have different and complex requirements for what may be corrected and how to accomplish the correction.

[7] Civil Code § 1689
[8] Civil Code § 2984

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CHAPTER 46: CONTRACTS HELD BY DEALER

This chapter discusses certain duties faced by dealers when they hold conditional sale contracts or leases.

Legal background

No law requires a dealer to assign the conditional sale contracts or leases entered into by the dealership. However, dealers should be aware that certain legal requirements are imposed on dealers who hold contracts and collect on them.

Duties pertinent to holding a dealership's own paper

GLB annual notice

The GLB Act (discussed in Chapter 1) requires financial institutions (including dealers) to provide customers with a privacy notice when entering into a credit transaction and once annually thereafter.[1] When a dealer assigns a contract or lease, however, the buyer or lessee is no longer the dealer's "customer," and the dealer is relieved from the duty to provide future notices. If the contract or lease is *not* assigned, the buyer or lessee remain the dealer's customer, and the annual privacy notice requirement applies.[2]

If a dealer needs to give an annual privacy notice (for example, if a dealer holds a lease or conditional sale contract), the simplest approach is to mail it first class to the individual's last known address. A privacy notice must be given annually as long as there is an outstanding obligation under the contract held by the dealer.

Licensing issues

Based upon exceptions recognized by the applicable licensing laws, a dealer is *not* required to obtain a banking or other finance company license to sell vehicles using conditional sale contracts, nor is a license required for a dealer to retain those contracts and collect on them.

However, once a dealer starts collecting on such contracts every month, requests from customers for payment extensions and for full-blown refinancing are sure to follow. Virtually all refinancing arrangements are extensions of credit that are outside the scope of a conditional sale contract and trigger license requirements. For this reason, many "buy here, pay here" dealers obtain a California finance lender license through the California Department of Business Oversight.[3] If refinancing arrangements are avoided, a dealer may hold and collect on conditional sale contracts without such a license.

ASFA repossession and collection requirements

The California Automobile Sales Finance Act (ASFA) and other laws strictly control vehicle repossessions, vehicle sales and application of the sale proceeds, and deficiency collections.[4] These laws require several types of notices

[1] 15 U.S.C. § 6801 et seq.
[2] 16 CFR § 313.5
[3] Finance Code § 22100
[4] Civil Code § 2981 et seq.

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to be given by the holder of the contract during each step of the repossession process. Dealers should contact legal counsel to discuss these notice requirements and other issues relating to vehicle repossessions.

GAP waiver payoff quotes and refunds

Dealers holding contracts that include GAP waivers must make certain disclosures to a customer when providing a payoff letter or quote (see discussion in Chapter 19).[5]

Fair debt collection laws

Even where no finance lender or similar license is required, dealers who regularly engage in consumer debt collection activities in the ordinary course of business are subject to the California Fair Debt Collection Practices Act.[6] Dealers engaged in debt collection activities should consult legal counsel for compliance guidance.

Debt collectors license requirement

Persons that regularly engage in the business of debt collection in California must be licensed pursuant to the Debt Collection Licensing Act (DCLA).[7] However, generally dealership employees are not considered "debt collectors" subject to such licensing requirements (see discussion in Chapter 53).

Reporting to credit bureaus

Significant legal requirements apply when customer information is supplied to a credit reporting agency. Most importantly, a dealer/creditor should *not* provide information regarding a specific transaction or experience to a consumer credit reporting agency if it is known or should be known that the information is incomplete or inaccurate.[8] Furthermore any information previously supplied *must* be corrected if the dealer/creditor determines the information is incomplete or inaccurate.[9] If disputed by the consumer, the dealer must investigate the accuracy of the information reported to the credit reporting agency.

The FACT Act provides a consumer with the right to directly dispute information supplied by a dealer or other creditor to a credit reporting agency.[10]

The FACT Act additionally provides that if negative information (meaning information concerning a customer's delinquencies, late payments, insolvency, or any form of default) is provided by a business such as a dealership to a consumer credit reporting agency, the business must give written notice to the consumer that negative information is being supplied.[11] Regulations developed by the Federal Reserve Board include a model form that may be used for this purpose.[12] The model form language reads as follows:

[5] Civil Code § 2982.12(a)(6)
[6] Civil Code § 1788 et seq.
[7] Financial Code § 100001(a)
[8] 15 U.S.C. § 1681s-2(a); Civil Code § 1785.25(a)
[9] 15 U.S.C. § 1681s-2(a); Civil Code § 1785.25(b)
[10] 15 U.S.C. § 1681s2(a)(8)
[11] 15 U.S.C. § 1681s2(a)(7)
[12] 12 CFR § 222, Appendix B, Model Notice B-1

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"We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report."

This notice must be provided to the consumer prior to, or no later than, 30 days after the negative credit information is supplied to the consumer credit reporting agency.[13]

Consumer Financial Protection Bureau

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) created the Consumer Financial Protection Bureau (CFPB) to regulate consumer financial products and services.[14] Dealers primarily engaged in the sale and servicing of motor vehicles are generally excluded from regulation by the CFPB.[15] However, for dealers who retain or assign to an affiliated finance source, their initial sale contracts and leases (buy-here, pay-here, or BHPH operations) are subject to regulation by the CFPB. For example, on November 17, 2014, the CFPB reached a Consent Order with DriveTime Automotive Group, Inc. regarding what it characterized as harassing debt collection calls and the reporting of inaccurate credit information. For compliance purposes, BHPH dealers will need to monitor CFPB for future rulemaking and enforcement actions.

[13] 15 U.S.C. § 1681s2(a)(7)(B)(i)
[14] 12 U.S.C. § 5301 et seq.
[15] 12 U.S.C. § 5519

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CHAPTER 47: DISHONORED CHECKS

This chapter discusses the rights of a dealer to collect a penalty or damages in the event a customer's check is dishonored.

Legal background

When a customer "bounces" a check (whether because of insufficient funds, a stop payment order, or a closed account) in connection with a retail sale or lease, or for vehicle servicing or a parts purchase, the customer is usually liable to the dealer for the full amount of that check. Depending on the circumstances of the transaction, the customer may additionally be liable to the dealer for a statutory penalty or, in some cases, treble (triple) damages.

If the dishonored check is tendered to the dealer as payment under a conditional sale contract, the California Automobile Sales Finance Act (ASFA) provides that the dealer is entitled to collect the amount of the check *plus* a statutory penalty of $15.[1] In other situations (including vehicle lease transactions, vehicle servicing, or parts sales), the dealer may be entitled to collect the amount of the check plus damages equal to three times the amount of the check, not to exceed $1,500.[2]

Conditional Sale Contract - $15 Penalty

ASFA provides that if a check given by the customer under a conditional sale contract is dishonored, the dealer is entitled to recover the check amount plus a fee of $15 – if the conditional sale contract so provides (as does the LAW RISC).[3] Checks covered under this rule would generally include downpayment checks, deferred downpayment checks, and any installment payments that the customer might make to the dealer.

It is noteworthy that a dealer is not required to send the customer a prior notice or demand in order to be entitled to recover the $15 penalty.

Transactions not involving a conditional sale contract

In other transactions not involving the conditional sale of a motor vehicle, a dealer is not constrained by the $15 limitation, but may instead qualify to recover the check amount plus treble damages equal to three times the check amount, but not less than $100 nor more than $1,500.[4] These other transactions include:

- Vehicle sale for cash;
- Vehicle sale for business or commercial use;
- Lease;
- Vehicle service; and

[1] Civil Code § 2982(p)
[2] Civil Code § 1719
[3] Civil Code § 2982(p)
[4] Civil Code § 1719

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- Parts sales

In order to qualify for recovery of treble damages for a dishonored check in these situations, a dealer must first send a written demand for payment to the customer. The language for the demand is governed by the statute and depends upon whether the check was dishonored because of a "stop payment," closed account or insufficient funds. Dealers should consult legal counsel regarding questions on the written notice requirements.

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PART E. F&I POLICY CONSIDERATIONS

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CHAPTER 48: CONSUMER ARBITRATION AGREEMENTS

This chapter discusses legal issues bearing on arbitration clauses or agreements in conditional sale contracts and consumer leases.

Legal background

The Federal Arbitration Act preempts state law efforts to outlaw arbitration agreements.[1] This means that arbitration agreements are "legal" and can be enforced as long as they meet general contract requirements. In 2011, this legal interpretation was upheld by the United States Supreme Court case of *AT&T Mobility LLC v. Concepcion*.[2]

In 2015 case of *Sanchez v. Valencia Holding Company, LLC*, the California Supreme Court found that the arbitration provision in the Reynolds and Reynolds LAW form 553-CA-ARB Installment Sale Contract was generally valid and enforceable.[3]

ARBITRATION PROVISION
PLEASE REVIEW - IMPORTANT - AFFECTS YOUR LEGAL RIGHTS

1. **EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN YOU AND US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.**
2. **IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.**
3. **DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.**

Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Provision, any allegation of waiver of rights under this Arbitration Provision, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this Vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action. If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Provision shall not apply to such claim or dispute. Any claim or dispute is to be arbitrated by a single arbitrator only on an individual basis and not as a plaintiff in a collective or representative action, or a class representative or member of a class on any class claim. The arbitrator may not preside over a consolidated, representative, class, collective, injunctive, or private attorney general action. You expressly waive any right you may have to arbitrate a consolidated, representative, class, collective, injunctive, or private attorney general action. You or we may choose the American Arbitration Association (www.adr.org) or National Arbitration and Mediation (www.namadr.com) as the arbitration organization to conduct the arbitration. If you and we agree, you or we may choose a different arbitration organization. You may get a copy of the rules of an arbitration organization by contacting the organization or visiting its website.

Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. The arbitrator shall apply governing substantive law and the applicable statute of limitations. The arbitration hearing shall be conducted in the federal district in which you reside unless the Seller-Creditor is a party to the claim or dispute, in which case the hearing will be held in the federal district where this transaction was originated. We will pay the filing, administration, service, or case management fee and the arbitrator or hearing fee up to a maximum of $5,000, unless the law or the rules of the chosen arbitration organization require us to pay more. You and we will pay the filing, administration, service, or case management fee and the arbitrator or hearing fee over $5,000 in accordance with the rules and procedures of the chosen arbitration organization. The amount we pay may be reimbursed in whole or in part by decision of the arbitrator if the arbitrator finds that any of your claims is frivolous under applicable law. Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. If the chosen arbitration organization's rules conflict with this Arbitration Provision, then the provisions of this Arbitration Provision shall control. Any arbitration under this Arbitration Provision shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.) and not by any state law concerning arbitration. Any award by the arbitrator shall be in writing and will be final and binding on all parties, subject to any limited right to appeal under the Federal Arbitration Act.

You and we retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, unless such action is transferred, removed or appealed to a different court. Neither you nor we waive the right to arbitrate any related or unrelated claims by filing any action in small claims court, or by using self-help remedies, such as repossession, or by filing an action to recover the vehicle, to recover a deficiency balance, or for individual or statutory public injunctive relief. Any court having jurisdiction may enter judgment on the arbitrator's award. This Arbitration Provision shall survive any termination, payoff or transfer of this contract. If any part of this Arbitration Provision, other than waivers of class rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. You agree that you expressly waive any right you may have for a claim or dispute to be resolved on a class basis in court or in arbitration. If a court or arbitrator finds that this class arbitration waiver is unenforceable for any reason with respect to a claim or dispute in which class allegations have been made, the rest of this Arbitration Provision shall also be unenforceable.

Conditional sale contract form with arbitration available to dealers

As a result of issues raised in the *Sanchez* case, the arbitration provision in the Reynolds and Reynolds Law® Retail Installment Sale Contract Form LAWCA – 553-ARB (LAW RISC) has been modified to make it less susceptible to legal attacks regarding its enforceability. This arbitration provision which is on the back of the contract is shown below.

Key features of the provision include the following:

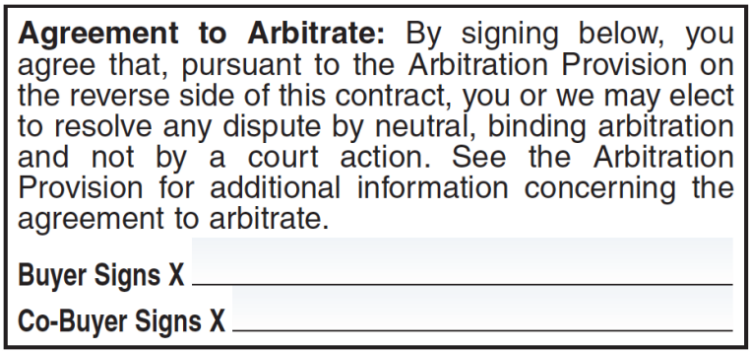
- The right to a court or jury trial is waived
- The right to participate in a class action is waived
- The dealership is committed to pay all arbitration fees up to $5,000 subject to certain exceptions (for example, when a frivolous claim is involved or the arbitration rules provide otherwise)

DEALER TIP:
UNDERSTAND THE ARBITRATION PROVISION
To help minimize legal challenges to the enforceability of the arbitration provision, dealership personnel should be familiar with the terms in that provision and be prepared to discuss them with customers.

[1] 9 U.S.C. § 1 et seq.
[2] 131 S. Ct. 1740
[3] 61 Cal. 4th 899

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The jury trial and class action waivers are important reasons why dealers should consider using the arbitration version of the LAW RISC. For the arbitration provision to take effect, dealership personnel must obtain the buyer's signature in a separate box on the front of the LAW RISC (show below).


Agreement to Arbitrate: By signing below, you agree that, pursuant to the Arbitration Provision on the reverse side of this contract, you or we may elect to resolve any dispute by neutral, binding arbitration and not by a court action. See the Arbitration Provision for additional information concerning the agreement to arbitrate.

Buyer Signs X _____

Co-Buyer Signs X _____

Arbitration clauses in leases

Most leasing companies (including captive finance companies) and banks use lease forms that also include arbitration provisions. Dealers should be familiar with these provisions in the lease forms they utilize and consult with legal counsel regarding any questions.

DEALER TIP:
CUSTOMER OBJECTION

Dealers may encounter situations where a customer is unwilling to sign a contract or lease form which includes an arbitration provision. In such instances, a dealer may either decline to sell or lease the vehicle or use a form that does not contain an arbitration provision. Before taking the latter approach, a dealer should check with the lender involved to make sure using a form without the arbitration provision is acceptable to

Arbitration provisions subject to continuing scrutiny

It is expected that further attacks on the enforceability of arbitration provisions will continue. The Consumer Financial Protection Bureau, a federal agency created by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), generated a rule which was to take effect in 2018 to prohibit financial institutions from entering into arbitration agreements with consumers. Although this rule was repealed by Congress in late 2017, consumer advocates strongly express the opinion that arbitration provisions are harmful to consumers. Even in the favorable Sanchez decision, there is recognition by the California Supreme Court that an arbitration provision may not be enforceable if it is "unfair or "one-sided."

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CHAPTER 49: RETAIL DEALER AGREEMENTS

This chapter discusses some important features of retail and lease financing agreements entered into between dealers and the banks and finance companies that purchase their contracts and leases, and urges dealers to carefully scrutinize and negotiate such agreements.

Legal background

It is not uncommon for a dealer to have retail financing agreements and retail lease agreements ("retail dealer agreements") with several banks or lenders at the same time. Each of these lenders will have its own retail sale or lease financing agreement for the dealer to sign. Oftentimes, the dealer will execute these agreements without scrutiny or careful consideration, or advice of legal counsel – probably in the belief that the agreements consist merely of "boilerplate" or "standard" provisions and are not subject to change or negotiation. A dealer who executes such an agreement without prior review or advice of legal counsel does so at great risk.

Warranties demanded of dealers

Retail dealer agreements generally contain several warranties and representations made by the dealer that apply to each contract subsequently assigned to the lender. The agreements typically provide that if any of these warranties or representations is violated, the dealer will be required to repurchase the contract or lease from the lender, or pay all costs to defend and indemnify the lender. Unfortunately for dealers, these warranties are often extremely broad or unfairly overreaching. Warranties of this type can come back to haunt the dealer in the future – either in a single transaction or, in some instances, multiple transactions over a period of time.

The following are examples of warranties typically found in financing agreements that a dealer should not agree to without correction or revision.

Warranty that all customer information is correct

"All information contained in the credit application is true and correct."

The problem with this warranty is that a dealer has no way of knowing whether most of the information a customer places on the credit application is accurate. If it turns out that any of the information on the credit application is inaccurate, the dealer will have violated the warranty, triggering the repurchase obligation. To avoid this problem, the warranty should be revised to read "All information contained in the credit application is true and correct to the best of Dealer's knowledge." Thus, if the dealer is not aware of any information falsely entered by a customer on a credit application, the dealer should not be in violation of the warranty.

Warranty that vehicle is insured

"The motor vehicle is insured by the purchaser [lessee] as required under the terms of the contract."

Although the customer usually provides the dealer with a written form containing his or her insurance information, the lender can argue that the dealer has violated this warranty if it turns out that the customer's

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insurance information is false, or the policy has lapsed, has been cancelled, or will be cancelled. Instead of the dealer guaranteeing that insurance coverage is in place, the warranty should merely provide that the customer has provided written verification to the dealer. An example of warranty language modified for this purpose is "The customer has furnished Dealer with verification of insurance."

Warranty that Lender will be listed as lienholder

"The Dealer will take all steps necessary to ensure that a valid certificate of title, reflecting Lender as lienholder, is issued within 20 days from the date of sale."

A 10- or 20-day requirement for issuance of the title certificate oftentimes comes from out-of-state lenders and it is not realistic given delays often encountered when dealing with the California DMV. Accordingly, the warranty should be revised to expand the deadline to a time period appropriate for California.

Warranty of no defense or offset payment obligation

"The purchaser [lessee] has no defense or offset as to the making of payments due under the contract."

This warranty is overbroad because the customer's defense or offset as to the making of payments may arise from some wrongful act or omission on the part of the lender itself. A simple revision to remedy this problem is as follows: "The purchaser has no defense or offset to the making of payments due under the contract based on any act or omission on the part of Dealer."

Indemnity provisions

The retail dealer agreement's indemnity provisions may likewise be overboard. For example, some indemnity provisions state that a dealer will defend and indemnify the lender "against all claims, lawsuits, offsets or defenses asserted against the lender." Again, a lawsuit, claim or defense asserted by the customer against the lender may be a consequence of the lender's actions, not the dealer's. Accordingly, the indemnity provisions should make it clear that the dealer agrees to defend and indemnify the lender only against claims arising from any act or omission on the part of the dealer.

Similarly, many indemnity provisions contain language requiring the dealer to pay *all* costs (particularly attorney fees) to indemnify the lender, and that the lender may choose its own counsel (which the dealer will pay). To prevent being forced to pay exorbitant legal fees for "Ivory Tower" law firms to defend against minor claims, dealers should seek to amend indemnity agreements to instead require the payment of all *reasonable* costs to indemnify the lender.

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CHAPTER 50: USE OF SUPPLEMENTAL STICKERS

This chapter discusses legal issues bearing on supplemental window stickers for new vehicles.

Legal background

If a supplemental sticker or "addendum sticker" is posted on a new vehicle, the sticker must comply with specific requirements of California law and follow common sense guidelines to avoid a deceptive practices claim.[1] The text of the applicable California statute does not require a dealer to post a supplemental sticker on a new vehicle to charge a price higher than the Manufacturer's Suggested Retail Price ("MSRP"). Note however, legal arguments have been made that it is required when the dealer's asking price exceeds MSRP.

Dealers should be aware that in a recent California appellate court opinion upholding a trial court judgment of injunctive relief against a dealer for misrepresenting aftermarket equipment as OEM equipment, the appellate court stated in passing that "…the California Vehicle Code only requires supplemental stickers to be affixed to vehicles when the asking price exceeds the MSRP."[2] Because this statement was not necessary for the court to decide the case, it is considered "dictum" and is not binding on other California courts. However, unscrupulous consumer attorneys are likely to cite this statement out of context to imply that it is the law. As such, out of an abundance of caution, dealers may want to consider using a supplemental sticker whenever the asking price exceeds the MSRP.

Certainly, if a dealer uses a supplemental sticker, then the sticker must comply with the legal requirements, which are discussed below.

Supplemental sticker requirements

When a dealer uses a supplemental sticker, it must disclose the following:[3]

- The vehicle's MSRP (this disclosure must be made clearly and conspicuously);
- That the supplemental sticker is the dealer's asking price, and *not* the MSRP. This disclosure must be made in the largest print on the sticker (other than the print stating the dealership's name);
- Each item not included in the MSRP and the price of that item; and
- When the sticker price exceeds the MSRP plus the price of the items added by the dealer, the amount of that difference. This amount must be described as "added mark-up."

Additional DMV guidelines that apply to a dealer's use of a supplemental sticker are as follows:[4]

[1] Vehicle Code § 11713.1(b) and (q)
[2] Denike v. Matthew Enterprise, Inc. (2022) 76 Cal.App.5th 371
[3] Vehicle Code § 11713.1(q)(1)(2) and (3)
[4] DMV Bulletin dated May 1, 1984

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- The sticker must clearly have been created by the dealer and not designed or formatted in a manner to make it appear like part of the manufacturer's Monroney sticker.
- Charges for services such as P.D.I. for which the dealer is or will be reimbursed by another party must not be listed on the sticker.[5]
- If the sticker lists dealer added accessories, those accessories must be actually *installed and operative*, and the prices should reflect the dealer's regular asking price for such accessories.
- The selling price listed on the sticker should include all costs to the buyer at the time of delivery, except for governmental fees and taxes, any finance charges, any dealer document processing charge, any electronic filing charge and any emission testing charge.[6]

Because the supplemental sticker is an advertisement of the price of a vehicle, the following should be added to the supplemental sticker: "Plus government fees and taxes, any finance charges, any dealer document processing charge, any electronic filing charge, and any emission testing charge."[7]

For some items, such as certain security systems that are installed, but may require some additional action to be operational and/or otherwise activated, the best practice is to not include them on a supplemental sticker. Optional F&I products, such as service contracts, tire and wheel protection, key replacement programs, and the like should not be listed on a supplemental sticker. Questions regarding the use of supplemental stickers and the treatment of items that require such additional action should be reviewed with legal counsel.

Example form

Reynolds and Reynolds Supplemental Sticker Form (Form 313) is shown here.


MANUFACTURER'S SUGGESTED RETAIL PRICE $

Stock No. _____

Make _____

Model _____

V.I.N. _____

ADDITIONAL EQUIPMENT ADDED BY DEALER $

ADDED MARK-UP $

*Dealer's Asking Price (Not The Manufacturer's Suggested Retail Price) $

INCLUDES DEALER INSTALLED OPTIONS

*Plus Government Fees and Taxes, any Finance Charges, any Dealer Document Processing Charge, any Electronic Filing Charge, and any Emission Testing Charge.

LAW® FORM NO. 313 (REV. 7/12)

©2012 The Reynolds and Reynolds Company TO ORDER: www.reysource.com; 1-800-344-0996; fax 1-800-531-9055

[5] 13 CCR § 262.03
[6] DMV Bulletin dated May 1, 1984; Vehicle Code § 11713.1(b)
[7] Vehicle Code § 11713.1(c)

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CHAPTER 51: SAFEGUARDING COMPUTERIZED CONSUMER DATA

This chapter discusses legal issues bearing on how the F&I department should address its duty to safeguard customer information.

Legal background

In connection with the GLB Act, FTC regulations require dealers to implement physical, administrative, and technical safeguards to ensure the security and confidentiality of "customer information" (nonpublic personal information about a customer).[1] The information must be safeguarded against misappropriation, alteration, tampering, and other misuse. These regulations are known as the "Safeguards Rule." The FTC officially published revisions to the Safeguards Rule in 2021, which revised rules and expanded a number of requirements applicable to dealers.

California laws also exist which place legal obligations on businesses such as dealerships to protect customer information, including obligations relating to the disposal of customer records; the protection of personal information; giving notice to customers in the event of a security breach of computerized data containing unencrypted personal information; and protecting social security numbers.[2]

Information to be protected

The GLB Act protects the personal information of customers, including all nonpublic information (such as their social security number, unlisted phone number and address), and information about customer transactions (such as whether they purchased, financed, or leased a vehicle and the price they paid).

Technically, the application of the GLB Act is limited to data supplied to a dealer in connection with a credit sale, lease, or other credit transaction. However, the FTC has made known its belief that the financial services scope of the GLB Act should not permit companies to ignore the security of information pertaining to non-credit customers.

Moreover, California law requires all businesses to safeguard most customer information. If personal information about a California resident is to be shared by a business with a nonaffiliated third party, the business must require the nonaffiliated third party to implement reasonable security measures as well.[3]

This collection of state and federal laws dictate that dealers must establish customized safeguards policies to protect the personal information of customers, and that dealership personnel follow those policies.

[1] 15 U.S.C. § 6801 et seq.; 16 CFR Part 314
[2] Civil Code §§ 1798.29, 1798.81, 1798.81.5, 1798.82, 1798.85, and 1798.150
[3] Civil Code § 1798.81.5(c)

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Required compliance elements

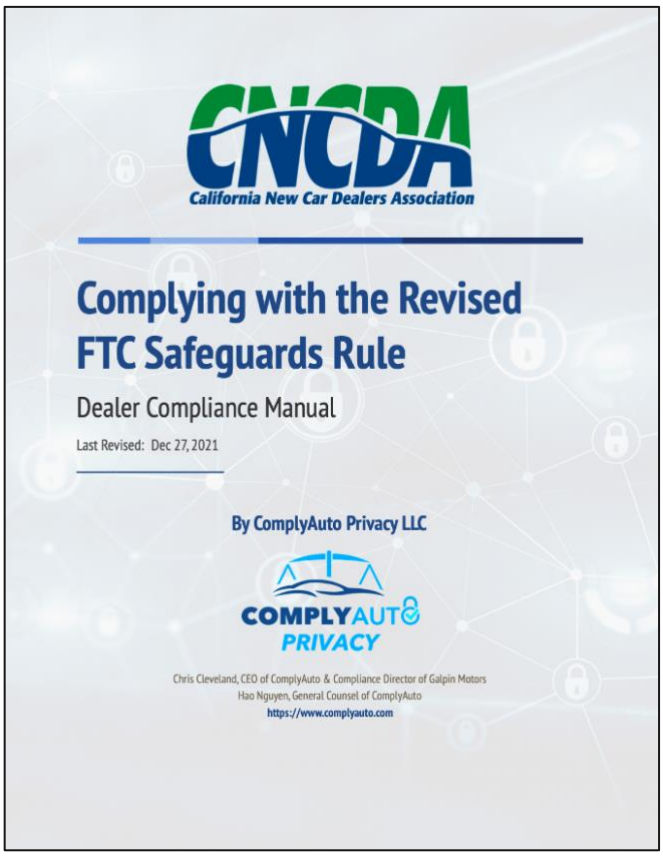
The federal Safeguards Rule requires the development, implementation and maintenance of a comprehensive written information security program with physical, administrative and technical safeguards that are in place to protect customer information.

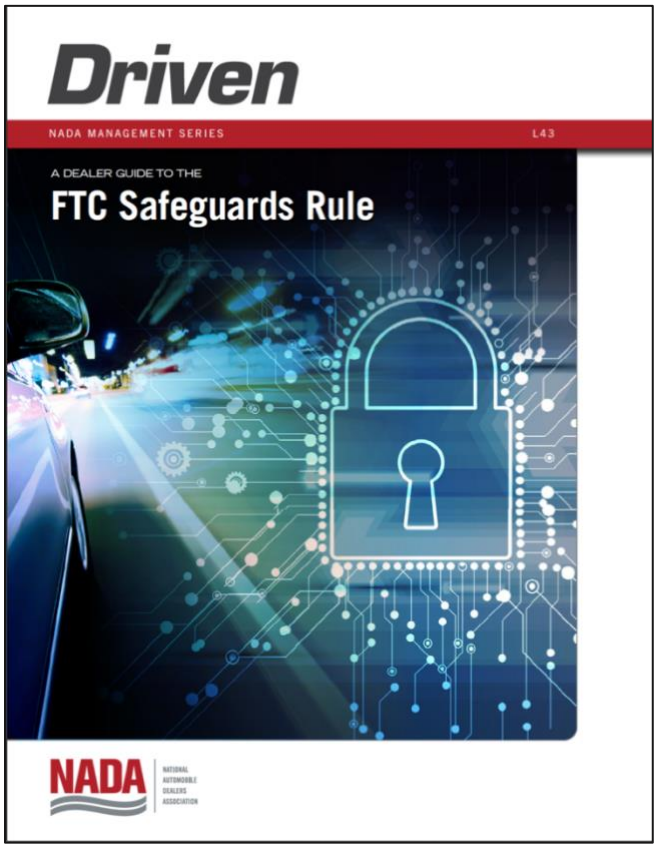
Such a program must include the following:

- The designation of a "qualified" program coordinator;
- A written security risk assessment;
- A written incident response plan;
- An assessment of dealership security procedures focusing on reasonably foreseeable internal and external risks to the security and confidentiality of customer information. Areas to be assessed and covered by the policy include: employee and management training; systems relating to information processing, storage, transmission, and disposal; and the prevention and detection of intrusions regarding the dealership's electronic and non-electronic information systems and the response to such intrusions or other system failures;
- A contract with each service provider that receives customer information requiring the service provider to maintain appropriate safeguards. Dealers need to reasonably monitor service providers regarding Safeguards Rule compliance; and
- The ongoing evaluation and adjustment of the program to maintain its effectiveness.

The CNCDA Dealer Compliance Manual titled "Complying with the Revised FTC Safeguards Rule" and the NADA Guide titled "A Dealer Guide to FTC Safeguards rule" are not intended as legal advice but are helpful resources for dealers in complying with the Safeguards Rule. This manual and guide may be accessed by CNCDA and NADA members (login required) at www.cncda.org and www.nada.org, respectively.

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Examples of safeguards for sensitive information

As discussed above, each dealer must develop a safeguards program to protect customer information. The development of this program should take into account the unique characteristics of a dealership's operation.

As part of this effort, dealers must be aware that the Safeguards Rule and California law requires added diligence to protect very sensitive information. Credit applications, vehicle registration applications, credit reports, customer social security numbers and dates of birth are highly sensitive items of information that must be kept secure at all times and in all stages, regardless of dealer size or circumstances. As a starting point, dealers should consider the following steps:

- Limit the availability of visitors or passersby to view such information on computer screens;
- Limit the ability of visitors or passersby to overhear conversations with customers, lenders, and others, where customer personal information might be discussed;
- Secure paper records containing such information in locked areas and/or cabinets;
- Secure computerized records containing such information with a strong password and other protections such as encrypting data and using multifactor authentication;
- System monitoring, penetration testing, and vulnerability assessments for information systems;

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- Ensure that a DMS vendor is given consent to access the dealer's proprietary information and customer personal information only as is appropriate. California law give dealers protection in this area by prohibiting manufacturers and computer vendors from accessing, modifying or extracting information from a confidential dealer computer record (including personally identifiable consumer data) without the prior written consent of a dealer;[4]
- Consider whether contracts with vendors that may have access to the dealer's proprietary information and customer personal information should contain provisions prohibiting the vendor's use of such information for purposes outside of the Dealer's business relationship with the vendor;[5] and
- Ensure that any electronic transmission of sensitive data is done so securely and that such data is sent in an encrypted format.

[4] Vehicle Code §§ 11713.3(v) and 11713.25
[5] See the CNCDA "California Consumer Privacy Act of 2018 (CCPA) Compliance Handbook for more information on this topic. This handbook is not intended as legal advice and may be accessed by CNCDA members (login required) at www.cncda.org.

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CHAPTER 52: KSR REQUESTER COMPLIANCE

This chapter discusses the need to comply with privacy obligations enforced by the DMV with respect to commercial requester accounts needed for access to DMV electronic registration and other "KSR" information.

Legal background

In 1989, a stalker murdered actress Rebecca Shaffer. One of the things that came out as a result of the investigation of that case was that the stalker (or a private investigator he hired) was easily able to obtain the victim's address from vehicle registration data sold by the DMV to the public. The California Legislature and DMV responded quickly to limit access to DMV data. A federal law was also enacted in the early 1990s requiring state DMVs to control access to personal information.[1]

Dealers may obtain KSR reports from the DMV. These reports provide DMV public records information which can, for example, provide dealers with valuable information such as a vehicle's history and registration status. Today, dealers who seek "KSR" and similar information from DMV records are heavily regulated by law and also controlled by terms of the written agreements they must sign to obtain a commercial requester account.[2] These regulations and contractual provisions not only limit the purposes for which DMV data may be obtained but impose duties on a dealer to safeguard and account for the dealer's access to DMV data. It is beyond the scope of this chapter to cover these regulations in detail; however, several key points are presented below.

[1] 18 U.S.C. §§ 2721-2725
[2] Vehicle Code § 1808.23; 13 CCR § 350.28

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Security Requirements

The following information regarding DMV Requester ("Requester") security requirements is provided by the DMV in its *Commercial Requester Information Handbook* available on its website (www.dmv.ca.gov) under the vehicle industry handbook section.

DEALER TIP: REGARDING SECURITY REQUIREMENTS
Dealers must keep a daily log that tracks the receipt, use and dissemination of DMV information. Every dealership employee with direct or indirect access to the data – including simply reviewing file copies – must sign form INF 1128.

1) Requester shall maintain the security and integrity of any information it receives and shall maintain records and documents to justify and support proper use of requested information. All Requesters are required to establish and maintain daily logs and source document that track the receipt, use and dissemination of DMV information.

2) Requester shall notify DMV's Information Services Branch, Policy and Information Privacy Section, by telephone, at (916) 657-5583 within one (1) business day if fraud or abuse is suspected or confirmed, or the security of the requester code is compromised.

3) A written notification containing all facts shall be prepared by the Requester within three (3) business days and mailed to the Policy and Information Privacy Section. (See Part IV)

4) Requester shall require every employee and/or the system administrator, having direct or incidental access to DMV records, to sign a copy of the Information Security Statement, (INF 1128), upon initial authorization for access and annually thereafter.

5) Requester shall maintain signed Information Security Statement, (INF 1128), forms at the Requester's worksite for at least two (2) years following the deactivation or termination of the authorization and shall be available to the DMV upon demand.

6) Requester shall restrict the use and knowledge of requester codes and operational manuals to persons who have signed an Information Security Statement, (INF 1128).

7) Requester shall maintain and make available to DMV upon demand, a current list of names of persons authorized to access DMV records, terminal identifiers (termid/netname), and the number of users for each terminal, if applicable.

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8) Requester shall ensure that video terminals, printers, hard copy printouts, or any other form of duplication of DMV information that is located in public access areas shall be placed so that the public or other unauthorized persons cannot view the information.

9) Access terminals displaying DMV data shall display a "sign-on banner" containing some variation of the following admonishment: "WARNING: Unauthorized access and/or misuse of data may result in adverse action/or criminal prosecution."

10) Requester shall ensure that DMV information is not electronically transmitted to anyone unless the file is protected from disclosure during transport. Encryption for this purpose shall use algorithms in compliance with published National Institute of Standards and Technology (NIST), American National Standards Institute (ANSI) and Internet Engineering Task Force (IETF).

DEALER TIP: REGARDING SECURITY REQUIREMENTS

Terminals displaying DMV data must display a warning banner. Even if sent to a proper recipient, any email or other transmission of the data must be encrypted.

11) Requester shall ensure that all information received from DMV files is destroyed once its legitimate use has ended. The method of destruction shall be in a manner that it cannot be reproduced or identified in any physical or electronic form.

12) Requester shall not disclose its DMV assigned requester code, orally, in writing or electronically, to anyone that is not in the direct employment of Requester or has not signed the Information Security Statement, (INF 1128) other than a DMV approved Service Provider.

13) Requesters are required to implement and maintain adequate physical security for DMV information received (in any format), equipment, and systems that access DMV information.

14) Requester shall prevent unauthorized access administratively and/or electronically, including developing policies, procedures, and training of users on all information security including compliance with California Civil Code §1798.82.

15) Requester shall ensure that systems and DMV data transmitted or stored off-site, regardless of format, must be physically protected from unauthorized access or use during transit and in storage. Physical access to network components, servers and data storage devices must be restricted to authorized and identified staff.

Additional restrictions apply where residence address information is requested and obtained:

1) Any Requester who is authorized to access and use confidential residence address information shall protect the confidentiality of any residence address received from DMV records pursuant to CVC §1808.47 and shall comply with additional security requirements contained in this section.

2) Prior to being approved to access and use confidential residence address information, a Requester shall provide the state or federal statute that authorizes or requires DMV to release confidential residence address

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information and the use of any confidential information obtained shall be limited as provided in the identified statute.

3) Requester shall not use confidential residence address information obtained for any direct marketing purpose.

4) Requester shall maintain a log of each request for two (2) years from the date of the request. The log shall be immediately available to DMV upon demand. The log format shall provide the following in the order presented:

    a. Requester code used to make the request.
    b. Date of request.
    c. Type of information requested.
    d. Points of identification used for the request (e.g., license number and DOB).
    e. Business reason for the request. NOTE: An Information Requester Log (INF 2115) is available at www.dmv.ca.gov.

5) Requester shall not obtain or use any confidential or restricted information for any purpose other than the purpose approved by the DMV.

Frequently Asked Questions

The DMV's Commercial Requester Information Handbook also contains the following frequently asked questions with notes:

What are the available methods to receive information from DMV? Information can be received either directly from DMV (for example, hardcopy, secure file transfer, online) or indirectly from a DMV approved service provider. For a current list of approved service providers, visit www.dmv.ca.gov.

Can I use the information received from DMV for any purpose? Information obtained from DMV can only be used for the legitimate business purpose approved by the department. The department's approval letter will contain the business purpose for which you were approved. See page 6.001 for a definition of legitimate business need.

Can I retain, combine, link or store the information I receive from DMV? Information received from DMV cannot be retained, stored, combined, and/or linked with any other data on any database for any subsequent reproduction, distribution, or resale. The individual record may be stored and maintained either manually or electronically for the purpose for which it was requested and for as long as your legitimate business use requires it (see IMPORTANT NOTE below).

If I am a consumer reporting agency as defined in 15 USCS 1681(f) of the Fair Credit Reporting Act (FCRA) and must retain information to comply with FCRA requirements, how long can I keep this information? As a consumer reporting agency, records obtained from DMV can be stored exclusively to

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respond to inquiries for information contained in consumer reports and verification of that information if disputed. You may retain the information for a reasonable period of time to respond to customer inquiries. DMV interprets reasonable as 60 days from the date the information was received. If the information is undisputed, it must be destroyed after the 60-day retention period. If the information is disputed, the records must be destroyed upon the resolution of the dispute.

What do I do with the record information when it is no longer needed? Commercial requesters are responsible for destroying DMV record information containing personal information, such as, name, driver license or identification number, or physical characteristics, etc., by shredding, erasing, or modifying the personal information to make it unreadable or undecipherable as provided in Civil Code Sections 1798.80, 1798.81, and 1798.82.

IMPORTANT NOTE: Residence addresses received from DMV records may not be used for any direct marketing or solicitation for the purchase of any consumer product or service (CVC §1808.23(b)).

If I have someone acting as my agent, can I release confidential information to that person? If confidential or restricted information is released to any agent of a person authorized by DMV, the person shall require the agent to take all steps necessary to ensure confidentiality of this information. No agent shall obtain or use any confidential or restricted records from requester code holders for any purpose other than the reason the information was requested. Reasons for requesting information are limited to those stated on the approved account application.

Are there any DMV forms that must be signed by someone acting as my agent or by my employees? Yes, an Information Security Statement (INF 1128) form, must be maintained on file for each agent, performing work on behalf of the requester. The INF 1128, is also required for all employees authorized to access DMV information. These forms must be maintained at the worksite and be available to the DMV auditors upon request.

Do I need to have any written procedures in place for information security? You are required to establish written procedures to protect the confidentiality of the information received from DMV. CVC §1808.47 states: Any person who has access to confidential or restricted information from DMV shall establish procedures to protect the confidentiality of those records.

Where must these procedures be kept? The established security procedures must be maintained on site and available to DMV's auditors.

Do I need to have anyone in charge of securing this information? Yes. You should appoint someone to be in charge of maintaining the security of DMV information. Be able to provide the name, title, and telephone number of that person upon request.

Are there any other security requirements I or my employees must be aware of if accessing DMV information by computer? The following has been prepared to assist in complying with the security requirements:

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- Remember, account holders are personally responsible for all activity occurring under their User ID while signed on to the DMV computer.
- Do not write passwords down or tell your password to anyone. Passwords are not to be shared among individuals or groups.
- Always log off the terminal each time the terminal is left unattended.
- Passwords should be changed at least every 90 days or less, to help prevent illegal access.
- DMV information should only be requested and used for the legitimate business need for which it was approved.
- Do not have your terminal screen visible to anyone that is not authorized to view the information.
- DMV information must be properly destroyed when legitimate business need has ended.
- Any terminals accessing DMV information must not be in areas open to the public. Video screens containing DMV information must be facing away from the public.
- Printed records, and any records stored to any electronic media (diskette, hard drive etc.), must be protected from unauthorized access and viewing.
- Requester code(s) and any personal identification numbers used by employees must be protected from unauthorized use.

Do I need to keep any logs of the information I request? Yes. You must establish and maintain daily logs and source documents, which track the receipt, use, and dissemination of DMV information. These logs and documents must be available to DMV auditors upon request.

What information must the log contain? The log must contain the following information for every transaction:

- Requester code.
- Date of request.
- Name of the subject of request.
- Information requested (Driver License, VIN/HIN, and Vehicle/Vessel Plate Number).
- Reason or purpose for the request and supporting documentation as necessary.
- Cross-reference to the corresponding supporting documentation (for example, file/case #, account #, inventory/control #, etc.).

NOTE: An Information Requester Log (INF 2115) form is available for your use on DMV's website at dmv.ca.gov.

How long must the log be retained? The log and required documentation must be kept for 2 years from the date of the request by any requester who requests or receives confidential information not for resale in accordance with CCR §350.48.

Whom should I notify if I suspect fraud or misuse of DMV record? If fraud or misuse is suspected or confirmed, you must notify DMV's Information Services Branch, Policy and Information Privacy Section at (916)

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657-5583, within one (1) business day of discovery. A written notification containing all facts must be prepared by the requester within 3 business days and mailed to:

Department of Motor Vehicles
Policy and Information Privacy Section, MS H225
P.O. Box 942890 Sacramento, CA 94290-0890

IMPORTANT NOTE: Failure to keep proper and complete logs of requested information remains the single most common noncompliance finding by DMV auditors. To avoid suspension of your account and access to DMV information, you are required to maintain a log for recording the information you access. You are encouraged to use the INF 2115 for this purpose.

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CHAPTER 53: LICENSING REQUIREMENTS FOR F&I PERSONNEL

This chapter discusses licensing requirements applicable to F&I operations.

Legal background

Vehicle Code and Insurance Code licensing laws apply to F&I personnel depending on their actual job functions.

Insurance licensing requirements

The number of dealers licensed to sell insurance appears to have declined over the years. This decline is likely due to the extensive requirements for obtaining the needed licenses, including training, testing and continuing education.

Types of licenses

A dealer receiving commission on any insurance sold or financed must have an appropriate insurance agent license, as must any employee who participates in insurance transactions (subject to the exceptions discussed below).

There are several types of insurance agent licenses: property or casualty, life (which includes life and/or disability insurance), personal lines (which includes automobile insurance), and limited lines automobile insurance agent (which is limited to automobile insurance).[1]

Another class of license is a credit insurance agent license.[2] The dealer *entity* obtains this license and may endorse the names of employees who transact such insurance on the license. To be endorsed, employees must complete training but do not need to apply and test for a standard agent license. However, the credit insurance agent license is limited to credit life insurance, credit disability insurance, credit involuntary unemployment insurance, credit loss-of-income insurance, credit property insurance and Guaranteed Automobile Protection (GAP) insurance and must be sold in connection with a loan or extension of credit. Dealers should note that the sale of non-insurance debt cancellation agreements or GAP waivers does not require an insurance license. (See Chapter 19 for a detailed discussion.)

Exceptions to licensing

Every employee having any connection with selling or offering insurance to a customer must have a license (or be endorsed on the credit insurance agent license) except for:[3]

- Regularly salaried administrative or clerical employees primarily employed for purposes other than solicitation of insurance who receive no commission on insurance, directly or indirectly; and

[1] Insurance Code §§ 1625, 1625.5 and 1625.55
[2] Insurance Code § 1758.9 et seq.
[3] Insurance Code § 1635(i)

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- Employees devoting substantially all their activities to selling merchandise who quote premiums for single interest insurance to be included in the purchase price and who receive no insurance commission.

Vehicle salespersons license for F&I personnel

A vehicle salesperson license is needed if an employee does any of the following:[4]

- Is employed as a salesperson;
- Receives any compensation for causing (or attempting to cause) a vehicle to be sold;
- Induces the sale or purchase of a vehicle and receives or expects to receive profit from either the seller or purchaser;
- Exercises managerial control over the business of a licensed vehicle dealer, including a general manager, assistant general manager, or sales manager;
- Supervises vehicle salespersons; or
- Negotiates with or induces a customer to enter into a conditional sale contract.

The DMV has taken the position that a finance manager must have a salesperson's license. While some personnel with a finance manager title may not perform the duties requiring a license as stated above, any employee who facilitates the contracting process by explaining the provisions of vehicle sale or lease agreements to customers and asking customers to sign the contract should be considered an employee in need of a salesperson's license.

Some dealers use trained administrative personnel to actually input and produce documents for the signature of a customer. As long as these employees do not communicate with the customer concerning any matter of substance, they would not appear to require a salesperson's license. However, a conservative compliance policy would be to require these employees to have a salesperson's license if they "go over" the contract with the customer or in any other way induce the customer to sign.

Sharing sales staff

Multiple dealerships with a common controlling ownership (meaning more than 50% of the ownership interest in each dealership is held by the same person(s) or controlling entity) may "share" licensed sales staff—effectively allowing the sales staff to work at multiple locations.[5] For legal compliance purposes, a licensed salesperson working at more than one dealership must post a copy of his or her salesperson's license at each dealership involved and complete and submit an OL-16A form to the DMV for each such dealership.

Debt collectors license requirement

Persons that regularly engage in the business of debt collection in California must be licensed pursuant to the Debt Collection Licensing Act (DCLA).[6] Licensed debt collectors are regulated by the Department of Financial Protection and Innovation (DFPI). Generally, dealership employees would not be considered "debt collectors"

[4] Vehicle Code §§ 675 and 11800
[5] Vehicle Code § 11806(g)
[6] Financial Code § 100001(a)

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subject to such licensure requirements. However, if a specific employee (or employees) is tasked with regularly collecting consumer debt, they may be required to be licensed. While it is unlikely that dealers will be considered to be "engaging in the business of debt collection" and thus subject to licensure under the DCLA, in an abundance of caution, CNCDA submitted a comment letter seeking clarity on the scope of the law's licensure requirement and advocating dealers not be included, and as of the publication of this manual, the CNCDA is awaiting response from the DFPI. There are proposed regulations that, if adopted, may provide more clarity on what it means to "engage in the business of debt collection", and the CNCDA will alert dealers to any developments that may impact them. Dealers that have questions about the application of this law are encouraged to contact competent counsel.

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CHAPTER 54: POSTED SIGNS IN THE F&I DEPARTMENT

This chapter discusses signs that must be posted in the F&I office.

Legal background

California law requires a variety of signs to be posted in dealerships for viewing by the public. This chapter focuses only on those signs directly applicable to the F&I department. These are the "no-cooling off" sign; the right to inspect used vehicles sign; the Spanish and Asian translation sign; an optional sign stating a credit card may be requested but not required for check writing; a fuel economy guide display required by EPA regulations; and a notice of pre-sale availability of warranties required by Magnuson-Moss.

No Cooling off period sign

A sign at least 8 inches high and 10 inches wide must be placed in each sales office and sales cubicle of the dealership where written terms of specific sale or lease transactions are discussed with prospective purchasers or lessees and in each room of a dealer's established place of business where sale and lease contracts are regularly executed, which states the following:[1]

> THERE IS NO COOLING-OFF PERIOD UNLESS YOU OBTAIN A CONTRACT CANCELLATION OPTION.
>
> California law does not provide for a "cooling-off" or other cancellation period for vehicle lease or purchase contracts. Therefore, you cannot later cancel such a contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign a motor vehicle purchase or lease contract, it may only be canceled with the agreement of the seller or lessor or for legal cause, such as fraud.
>
> However, California law does require a seller to offer a 2-day contract cancellation option on used vehicles with a purchase price of less than $40,000, subject to certain statutory conditions. This contract cancellation option requirement does not apply to the sale of a recreational vehicle, a motorcycle, or an off-highway motor vehicle subject to identification under California law. See the vehicle contract cancellation option agreement for details.

Right to inspect used vehicles sign

A right to inspect used vehicles sign at least 8 inches high and 10 inches wide must be posted in a place conspicuous to the public which reads as follow:[2]

> THE PROSPECTIVE PURCHASER OF A VEHICLE MAY, AT HIS OR HER OWN EXPENSE AND WITH THE APPROVAL OF THE DEALER, HAVE THE VEHICLE INSPECTED BY ANY INDEPENDENT THIRD PARTY EITHER ON OR OFF THESE PREMISES.

[1] Vehicle Code § 11709.2
[2] Vehicle Code § 11709.1

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Spanish / foreign translation of contract signs

In all areas where contracts negotiated in a foreign language are signed (such as in F&I offices), a sign must be conspicuously posted in that language that states substantially the following:[3]

> WE ARE REQUIRED TO PROVIDE A [Language] LANGUAGE CONTRACT OR AGREEMENT IF WE NEGOTIATE (ORALLY OR IN WRITING) A SALE OR LEASE PRIMARILY IN THE [Language] LANGUAGE"

In the above sign, [Language] is replaced, in turn, by Spanish, Chinese, Tagalog, Vietnamese, or Korean. For each language in which the dealership negotiates contracts or leases, a separate sign such as this (in each of the languages) is required. For example, if all five languages are used, five signs need to be posted.

Credit card may be requested but not required for check writing

In lieu of training all employees that check writing customers are not required to display a credit card to write a check, a sign may be posted in a conspicuous location that reads as follows:[4]

> CHECK WRITING ID: CREDIT CARD MAY BE REQUESTED BUT NOT REQUIRED FOR PURCHASES.

Pre-sale availability of warranties

Written warranties offered with vehicles must be readily available to shoppers. A dealer must either conspicuously display the text of the written warranty in proximity to the product or post signs in conspicuous places advising, as shown below, that the warranties are available for inspection.[5]

> WARRANTY TERMS AND CONDITIONS ARE AVAILABLE FOR YOUR REVIEW UPON REQUEST.

Fuel economy guide booklets

Federal law requires dealers to prominently display the EPA's Fuel Economy Guide booklets at their dealerships in the same manner vehicle brochures are displayed. [6] This guide can be downloaded from www.fueleconomy.gov so that dealers can print copies from the electronic file.

[3] Civil Code § 1632(f)
[4] Civil Code § 1725(c)(2)(A)
[5] 15 U.S.C. § 2302; 16 CFR § 702.3(a)
[6] 49 U.S.C. § 32908

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CHAPTER 55: VIDEO OF CUSTOMER TRANSACTIONS

This chapter discusses the relative benefits and disadvantages of using a video recording system in the F&I Department.

Legal background

More often than not, consumer litigation against dealers involves a claim that a dealership employee – usually in the F&I department – made a false or misleading statement concerning the vehicle, an after-market product, or the terms of the deal. For example, the customer may contend that (a) the prior condition or history of a used vehicle was concealed or misstated, (b) the coverage or cost of a service contract was misrepresented, (c) the APR or terms of payment were not accurately stated, or (d) the advantages of a lease versus a sale were misrepresented.

In these situations, the outcome of the lawsuit generally turns on the customer's word against the dealership employee's word. For several reasons, it is difficult for a dealer to successfully defend against this type of lawsuit. First, it is not overreaching to say that a typical jury would probably hold a bias against an automobile dealership. Second, the dealership employee, who is the key witness for the dealer's defense, may have left the dealership's employment and therefore may be unavailable to testify at trial if he or she cannot be located or has moved out of state. Third, the dealership employee may be a disgruntled ex-employee who is unwilling to testify on behalf of the dealership or may testify in manner that is motivated by negative feelings for the dealership. In any of these situations, a dealer can be left without a first-hand witness who can deny the customer's allegations.

A possible solution to this dilemma is the video recording of all transactions that occur in the dealership's F&I department. This could provide strong, if not conclusive proof, as to exactly what was said and not said during the transaction, and could prove to be a valuable tool in defending against consumer litigation. Video recording is certainly an intriguing idea, but as with any relatively untested idea, has both its pros and cons.

Deciding whether to video

Pros

- **Persuasive evidence that the deal was done correctly**. If the transaction was handled properly and the video shows that the alleged misrepresentation or misstatement was not made, the video could provide the dealer a complete defense in a court of law. This type of evidence would eliminate the uncertainty involved when the outcome of a lawsuit comes down to the customer's word versus the dealership employee's word.

- **Possible proof of reasonable supervision**. If a video system is used, the videos should be reviewed by management on a regular basis to ensure that proper F&I practices are being followed. Proof that dealership management generally reviews the videos could shield the dealer from punitive damages and provide a defense to various claims.

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- **Training tool**. Videos could prove to be a valuable training tool. Good F&I practices can be shown to trainees on video.

- **Keeps F&I personnel on their best behavior**. With F&I personnel knowing that their transactions are being videotaped, they are less likely to "cut corners" or engage in improper conduct. This is especially true if they know that the videos are being reviewed by dealership management on a regular basis.

Cons

- **Possible evidence against a dealer**. This is the flipside: if the F&I department was guilty of fraud or a misstatement as alleged by the customer, the video will only serve to prove the customer's case against the dealer.

- **Possible evidence of additional misconduct**. Even if a video exonerates the dealer as to a particular allegation asserted by the customer, any other unlawful or unfair F&I practices will be caught on video. Also, the customer may be able to subpoena videos from other transactions to determine whether a pattern of wrongful practice exists. If such is the case, the video system will end up being the customer's strongest proof of gross misconduct by the dealership, and could support class action claims.

- **Possible evidence of single document rule violations**. Even an oral side agreement may violate the retail sale or lease versions of the single document rule. Such unlawful side agreements can be caught on video.

- **A lure to attorneys, regulators and franchisors**. If any third parties – such as attorneys, the DMV, or the franchisor – have or acquire a legal interest in auditing the dealership's F & I practices, they will be certain to ask for videos of vehicle transactions covering a substantial period of time – going back perhaps as long as 4 years.

- **Will not disprove statements made before or after video**. Even if the video exonerates the dealer, the customer is still free to claim that the wrongful or false statement or promise was made to him or her prior to or after the video session.

- **Risk of negative implication if video unavailable**. If the video of the transaction in question is unavailable for purposes of defending against the lawsuit because of loss, damage, or technical difficulty, jurors, judges, or law enforcement personnel may suspect that the video was hidden or destroyed because it contains evidence of wrongful conduct.

- **Expense**. Running a video system continuously in the F&I department, each and every day throughout the year, will create a new overhead expense for the dealer.

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Essential steps if video to be used

- **Consent required.** California law requires the consent of the customer before the transaction can be recorded.[1] Failure to obtain a customer's consent can be punished as a misdemeanor and could render the video inadmissible in a court of law.

- **F&I practices should be "bulletproofed" before going live.** This is critical. If a dealer is considering the installation and use of video, the dealership's F&I practices should be carefully audited, and where necessary, "cleaned up." F&I managers should also be well-trained to avoid unlawful practices. A dealer should be 100% confident that the F&I managers can competently and correctly handle every transaction.

The use of a video system can certainly have value to a dealer in defending against consumer litigation. However, it is fraught with many potential drawbacks and deficiencies. Because use of video is not a widespread or common practice, there is very limited feedback or evidence regarding the desirability of using a video recording system. Dealers are therefore strongly cautioned to work closely with their legal counsel before implementing any video recording system.

[1] Penal Code § 632

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CHAPTER 56: FAIR CREDIT COMPLIANCE

This chapter discusses the NADA's optional Fair Credit Compliance Policy and Program, as well as the relative benefits and disadvantages of adopting such a program in the F & I Department.

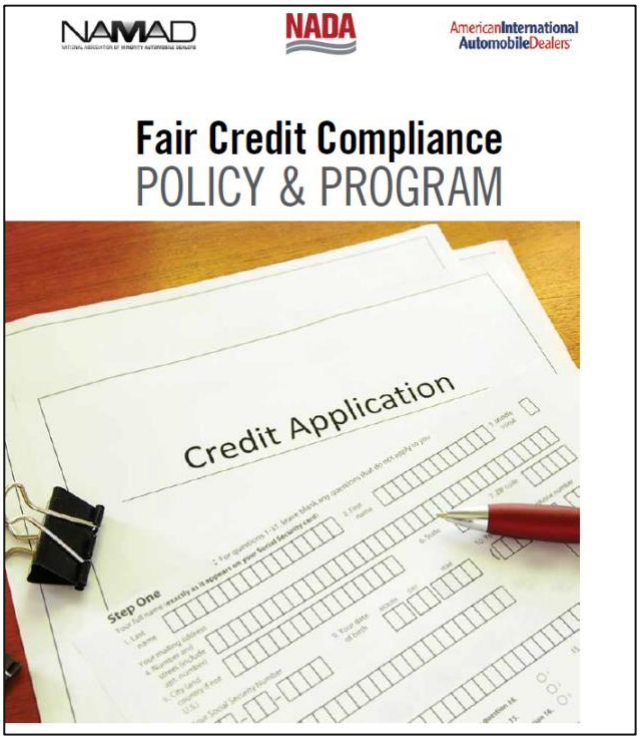
Legal background

The Equal Credit Opportunity Act (ECOA) prohibits discrimination against credit applicants based on the applicants' race, color, religion, national origin, sex, marital status, age, reliance on public assistance, and other factors.[1] ECOA's implementing regulation states that this prohibition applies to both intentional and unintentional discrimination that nonetheless results in a negative "disparate impact" on customers who are members of a protected class.

While most dealer activities are explicitly excluded from the jurisdiction of the federal Consumer Financial Protection Bureau (CFPB),[2] the CFPB has brought enforcement actions against indirect auto finance sources, resulting in policy changes and dealer-monitoring within the lender body. In addition, the CFPB has proposed the elimination of dealer pricing discretion through the adoption of a flat fee compensation system. As a result, there is pressure on dealers to prove that their activities do not result in disparate impact in the pricing of credit.

NADA Guidance

In response to these developments and dealer requests, and in part based upon consent orders that the Department of Justice (DOJ) entered into with two automobile dealerships to settle pricing discrimination claims in 2007, NADA developed its optional "Fair Credit Policy" and "Fair Credit Compliance Program" to address the issues raised by the CFPB. NADA's Fair Credit Compliance Program has gained support from many prominent observers since its inception,[3] including the



[1] 15 U.S.C. § 1691 et seq.
[2] 12 U.S.C. § 5519
[3] NADA Article "Managing Pricing Discretion in Credit Transactions: A Path Forward" (March 2021), available at https://www.nada.org

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American Bar Association[4] and a CFPB Taskforce on Federal Consumer Financial Law.[5] The purpose of the policy and program is to give dealers tools to show that their practices do not result in disparate impact in credit pricing. In short, the guidance recommends adopting a policy affirming the dealership's commitment to ensuring equal credit opportunity and complying with all applicable laws. It further recommends adopting a compliance program that sets a standard dealer participation rate and documentation of the reason for a deviation from the standard participation rate. While the CFPB has not signed off on them, the policy and program are based on a Department of Justice Consent Decree addressing alleged disparate impact in the auto lending space, and therefore carry the weight of the DOJ's prior approval.

NADA's guidance, along with a model policy and forms, is available at https://www.nada.org to NADA members (login required).

NADA Policy and Program require customization and consistency

NADA's optional Fair Credit Compliance Policy and Program, which is not intended as legal advice, provides the tools dealers need to adopt an effective approach to addressing allegations of disparate impact. The success of the program, though, relies on customization to your dealership and lending sources.

Further, any compliance program is only as good as its implementation. Anything less than full adoption by dealer personnel could effectively create indirect evidence of disparate impact in the pricing of credit.

It is therefore essential that dealers consult legal counsel when making decisions related to this topic. If a dealer adopts a policy and program, the dealer must also expect and demand 100 percent adoption by F&I staff.

California Consumer Financial Protection Law (CFPL)

The CFLP was enacted to strengthen consumer protections by expanding the ability of the California Department of Financial Protection and Innovation (DFPI) to improve accountability and transparency in the California financial system and promote nondiscriminatory access to responsible, affordable credit, among other purposes.[6] The CFPL specifically exempts licensees of any state agency other than the DFPI to the extent that the licensee is acting under the authority of another state agency's license,[7] and according to statements made by the then current commissioner of the department during a legislative hearing, franchised new car dealers are not covered under the purview of the DFPI because dealers are already licensed by the Department of Motor Vehicles and the Department of Consumer Affairs' Bureau of Automotive Repair. Notwithstanding the foregoing, it is possible that the DFPI will try to exploit loopholes within the law's language to investigate and penalize dealers that they claim are not "acting within the scope of their license" in any given circumstance. Accordingly, Dealers need to be aware of the CFPL and should contact competent legal counsel if they have any questions.

[4] American Bar Association, Resolution 116B (revised)(August 3, 2020), available at www.americanbar.org
[5] Taskforce on Federal Consumer Financial Law (TFCFL), CFPB, TFCFL Report Volume II, Recommendation 66 (January 2021), available at www.consumerfinance.gov
[6] Chapter 157, Statutes of 2020; AB 1864 (Limon, D-Santa Barbara)
[7] Financial Code § 90002(a)

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GLOSSARY

ASFA..... Automobile Sales Finance Act. Civil Code §§ 2981 to 2984.5. A California law, also known as the Rees-Levering Act, that is the key statute that regulates the format, content, and enforcement of conditional sale contracts. California's version of a "Motor Vehicle Retail Installment Sales Act" or MVRISA.

Automobile Sales Finance Act..... See ASFA.

California Vehicle Leasing Act..... See CVLA.

Clean Vehicle Rebate Project..... See CVRP.

CLRA..... Consumer Legal Remedies Act. California Civil Code § 1770 sets forth a laundry list of practices declared unfair methods of competition and unfair or deceptive acts or practices, and authorizes lawsuits to recover damages and seek injunctive relief.

Consumer Financial Protection Law..... See CFPL

Consumer Leasing Act..... See FCLA.

Consumer Credit Reporting Agencies Act... California Civil Code §§ 1785.1 to 1785.6.

Consumer Legal Remedies Act..... See CLRA.

CFPB..... Consumer Financial Protection Bureau, the agency authorized by the Dodd-Frank Wall Street Reform and Consumer Protection Act to regulate consumer financial products and services.

CFPL..... Consumer Financial Protection Law. This law is largely modeled after the federal Dodd–Frank Wall Street Reform and Consumer Protection Act and is intended to strengthen consumer protections and increase regulatory oversight of various financial service providers. Financial Code §§ 90000 to 90019.

CVLA..... California Vehicle Leasing Act. Civil Code §§ 2985.7 to 2992.

CVRP..... Project administered by California Air Resources Board that provides rebates for the purchase or lease of certain plug-in hybrid and zero-emission vehicles.

DCLA..... Debt Collection Licensing Act. The law provides for the licensure, regulation, and oversight of California debt collectors by the Department of Financial Protection and Innovation. The law also requires debt collectors to submit to examination, file reports under oath, maintain surety bonds, submit to criminal background checks and pay pro rata shares of all costs and expenses reasonably incurred by the DFPI to license and regulate the industry. Financial Code §§ 100000 to 100025.

Debt Collection Licensing Act..... See DCLA.

Dodd-Frank Wall Street Reform

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and Consumer Protection Act..... See Dodd-Frank Act.

Dodd-Frank Act..... Dodd-Frank Wall Street Reform and Consumer Protection Act. Federal law that is designed to enhance the accountability and transparency of the financial system and protect consumers from abusive financial services practices.

ECOA..... Equal Credit Opportunity Act. 15 U.S.C. § 1691 et seq. Federal law that prohibits discrimination on the basis of race, color, religion, national origin, sex, marital status, age, receipt of public assistance, or good faith exercise of any rights under the consumer protection laws. The ECOA also requires creditors to provide applicants with the reasons for denying credit. Implemented by Regulation B.

EFMP..... Program administered by the California Air Resources Board and Bureau of Automotive Repair that incentivizes lower-income individuals to retire older vehicles and replace them with more fuel-efficient vehicles.

Enhanced Fleet Modernization Program..... See EFMP.

Equal Credit Opportunity Act..... See ECOA.

E-SIGN Act..... Electronic Signatures in Global and National Commerce Act. 15 U.S.C. § 7001 et seq. Federal law that seeks to require acceptance by federal, state, and local governments of electronic contracts, records, and signatures. However, does not require any contracting party-- whether the government or a private party -- to use or accept electronic contracts.

Fair Credit Reporting Act..... See FCRA.

FACT Act..... Fair and Accurate Credit Transactions Act of 2003. Federal law to amend the FCRA, making the federal preemptions contained the FCRA for national credit reporting agency standards permanent. Gives consumers the right to a free credit report every year and creates a national system for reporting fraud. Permits consumers to place a fraud alert on their credit files, which triggers certain procedures and responsibilities for users of a credit report to verify the identity of a consumer with a "flagged" account who is seeking credit (to prevent identity theft) and to block the reporting of information in the consumer's file that is the result of identity theft. The FACT Act also requires a user of a credit report to reconcile the address if there is a substantial difference in the address on the application and the credit file.

FCLA..... Federal Consumer Leasing Act. Federal law regulating consumer leasing. 15 U.S.C. § 1667 et seq. A subpart of TILA, the FCLA requires lessors to provide lessees with uniform cost and other disclosures about certain consumer lease transactions. Disclosures are provided to consumers before they enter into lease transactions, when they renegotiate or extend a lease, and in advertisements that state the availability of consumer leases on particular terms. The act and regulation generally apply to consumer leases of personal property in which the contractual obligation has a term of more than four months. Implemented by Regulation M.

FCRA..... Fair Credit Reporting Act. 15 U.S.C. § 1681 et seq. Federal law that protects information collected by consumer reporting agencies (CRAs). Information in a consumer report cannot be provided to anyone who does not have a purpose specified under the FCRA. Users of information from CRAs for credit, insurance, or employment purposes must notify the consumer when an adverse action is taken on the basis of such reports.

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FTC Act..... Federal Trade Commission Act. 15 U.S.C. § 41 et seq. Federal law authorizing the Federal Trade Commission (FTC) to (a) prevent unfair methods of competition, and unfair or deceptive acts or practices in or affecting commerce; (b) seek monetary redress and other relief for conduct injurious to consumers; (c) prescribe trade regulation rules defining with specificity acts or practices that are unfair or deceptive, and establishing requirements designed to prevent such acts or practices; (d) conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce; and (e) make reports and legislative recommendations to Congress.

GLBA Act or GLB..... See Gramm-Leach-Bliley Act.

Gramm-Leach-Bliley Act..... Federal law, also known as the Financial Services Modernization Act of 1999. 15 U.S.C. § 6801 et seq. Includes provisions directing the FTC and federal bank and financial regulators to adopt rules governing the privacy and security of personal information. Abbreviated GLB Act or GLB.

Holden Credit Denial Disclosure Act..... California Civil Code §§ 1787.1 to 1787.2.

Magnuson-Moss..... Magnuson-Moss Act. 15 U.S.C. § 2307. Federal law that covers written warranties that apply to vehicles sold for personal, family or household purposes.

Military Lending Act..... See MLA.

MLA..... Military Lending Act. 10 U.S.C. § 987. Federal law designed to protect active-duty military and their dependents from certain lending practices relating to consumer credit transactions.

Nonpublic Personal Information..... Term used by GLBA and other privacy laws to refer to information that must be safeguarded against improper disclosure. Not all definitions are identical or even consistent. Originally defined under the GLB Act to apply only if credit or other financial information was included. Recent expanded use of the term in other laws and by the FTC suggests that all information about a person should be treated as nonpublic personal information other than his or her name and information openly available from unrestricted public sources. Items to keep confidential include: addresses; telephone numbers (unless listed); social security numbers; drivers license numbers; fact that person is your credit or lease customer; credit information; credit card numbers, account numbers.

OFAC..... Office of Foreign Assets Control, a branch of the federal Treasury Department. 31 CFR Part 500 et seq.

Regulation B..... Federal regulations implementing the ECOA. 12 CFR Part 202.

Regulation M..... Federal regulations implementing the FCLA. 12 CFR Part 213.

Regulation Z..... Federal regulations implementing the TILA. 12 CFR Part 226.

Song Beverly..... Song Beverly Consumer Warranty Act. Civil Code § 1792 et seq. California law that covers written warranties that apply to vehicles sold for personal, family or household purposes.

TILA..... Truth in Lending Act. 15 U.S.C. § 1601 et seq. Federal law that requires all creditors who deal with consumers to make written disclosures concerning all finance charges and related aspects of credit transactions (including disclosing finance charges expressed as an annual percentage rate). TILA also establishes

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certain requirements for advertisers of credit terms. Implemented by Regulation Z.

Truth in Lending Act..... See TILA.

Used Car Rule..... FTC's Used Car Rule. 16 CFR Part 455. FTC regulations that require dealers to disclose warranty information regarding used vehicles by means of the Buyers Guide form.

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