

The background of the slide is a photograph showing two hands shaking over the open hood of a car, symbolizing a deal or agreement. The image is dark and has a semi-transparent white border around the text area.

F&I COMPLIANCE SERIES

Part I: Compliance When Negotiating



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PLATINUM





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Disclaimer

This presentation is not meant to provide you with legal advice. Please consult your attorney for legal advice.



F&I Compliance Training Series: From Deal Negotiation to Post-Contract

Part I: Compliance When Negotiating (Today)

Part II: Deal Documentation Compliance (February 2021)

Part III: Warranty, CPO and Vehicle History (March 2021)

Part IV: Post-Contract (April 2021)

Today's Agenda

1. Overview
2. Advertising Issues
3. Foreign Language Negotiations
4. Oral Negotiations
5. Credit Applications
6. F&I Products
7. Privacy and Other Concerns





OVERVIEW



Overview

F&I Compliance: Daunting Task

Multitude of applicable federal and state laws

CALIFORNIA

Consumers Legal Remedies Act

Unfair Competition Law

Automobile Sales Finance Act

Vehicle Leasing Act

Vehicle Code & Regulations



Overview

F&I Compliance: Daunting Task

(Continued)

FEDERAL

Reg. Z

Reg. M

Fair Credit Reporting Act

Equal Credit Opportunities Act

Fair Credit and Accurate Credit Transactions Act

Gramm Leach Bliley Act

Red Flags Rule

Safeguards Rule

OFAC Statutes

Federal Trade Commission Act

Truth in Lending Act

Consumer Leasing Act





Overview (Continued)

Resulting Process

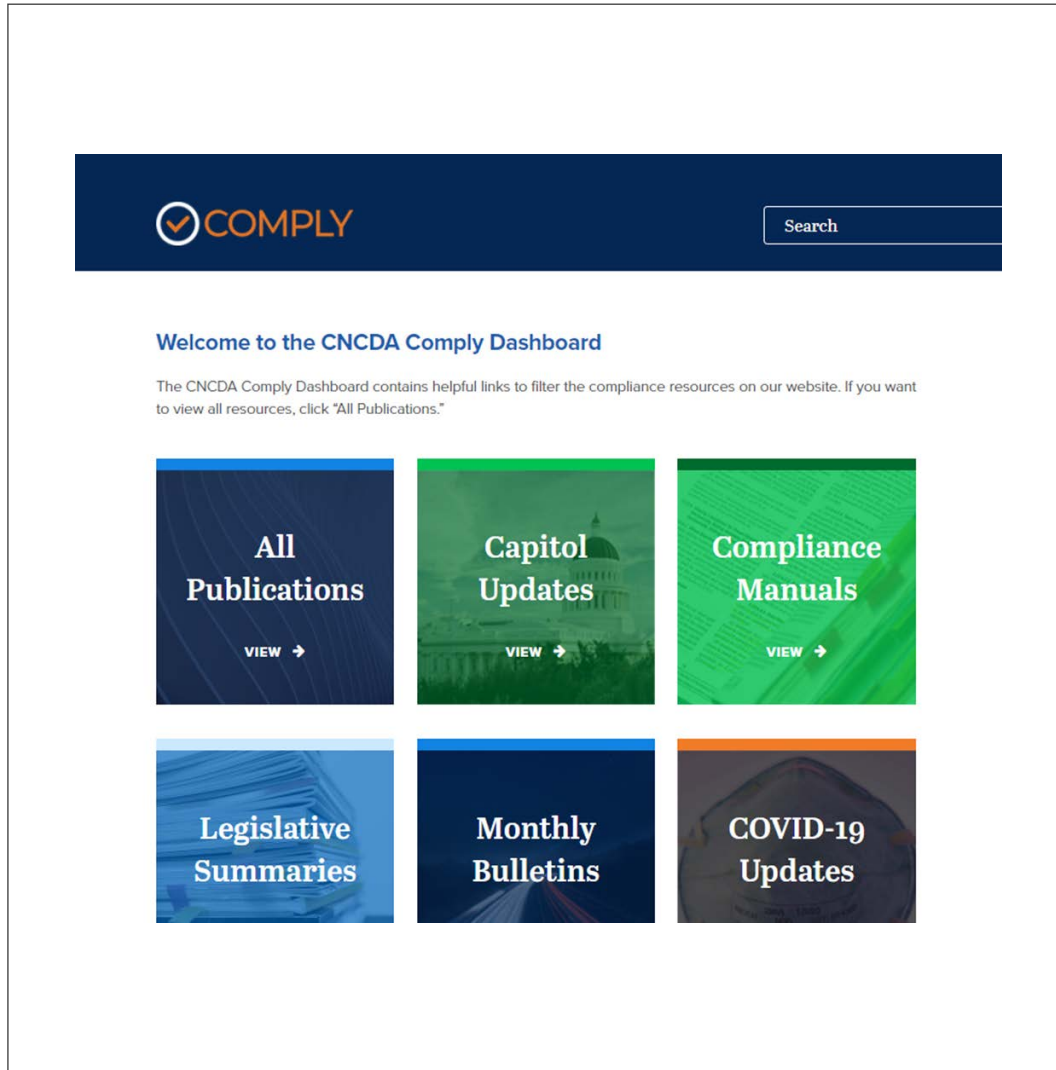
- 553 Contract
 - Over 2 Feet Long
- F&I Manual
 - 200+ Pages
- Numerous Forms
- Time-Consuming Process
- Mistakes Easy to Make



Overview (Continued)

Resources Available

- NADA Compliance Guides
- Legal Counsel
- CNCDA Legal Hotline
- CNCDA F&I Compliance Manual which is available on our website (www.cncda.org) under the “CNCDA Comply” tab.
- Reynolds & Reynolds Forms



Compliance Goals

- Avoid lawsuits
 - Rescission / attorney fees
- Avoid enforcement actions
- Penalties / fines
- License revocation
- Avoid dealership being forced to hold deals
- Bad business



How to Attain Goals

- CONSISTENT THEMES
 - Treat Customers Honestly
 - Treat Customers Fairly
 - Give Required Disclosures
 - Give Customers Copies of Documents





How to Attain Goals (Continued)

- CONSISTENT PROCESS
 - Have Good Communication Among Dealership Personnel
 - Use Good Forms and Know Their Content
 - Periodically Review Forms / Consult Legal Counsel
 - Review Customer Complaints Immediately and Thoroughly
 - Be Resourceful to Resolve

ADVERTISING ISSUES

Advertising Law Violations

- Most Common is Failure to Sell at Advertised Price or Terms
- Statutory Duty - Vehicle Code § 11713.1(e)
- Duty Applies Even if Buyer Doesn't Know Price
- Dealership Required to Display List of Advertised Vehicles
- DMV Will Enforce



Supplemental Sticker Issues

- Specific Statutory Restrictions - Vehicle Code § 11713.1(q)/DMV Guidelines
 - Confirm Form Used Complies (Not part of Monroney Sticker)
 - “Added Mark-Up” Designation
- Dealer Added Accessories – Installed and Operative
- Price on Sticker is Advertised Price
 - Only Exclude Governmental Fees and Taxes, Any Finance Charges, Any Dealer Document Processing Charge, Any Electronic Filing Charge And Any Emission Testing Charge



A background image showing a business handshake over a desk. On the desk, there is a laptop, a pair of glasses, and a clipboard with a colorful bar chart. The text 'FOREIGN LANGUAGE NEGOTIATIONS' is overlaid in a white serif font, enclosed in a thin white rectangular border.

FOREIGN LANGUAGE NEGOTIATIONS





Spanish & Asian Language Transactions

- Statutory Requirement to Provide Translated Contract When Negotiations Primarily in Spanish, Chinese, Tagalog, Vietnamese or Korean – Civil Code §1632
- Provide Translated Copy of RISC or lease filled in (Not Signed)
- To All Contract Parties
 - Must also give to co-buyers (2021 requirement)
- Not Applicable if Customer Has Own Adult Interpreter (Not Dealer Employee)
- Applicable to Other Documents, Optional Products Disclosure Form, GAP, Used Vehicle Contract Cancellation Option, Buyers Guide (Spanish), 10-Day rescission notice, any other notices/documents that enforce or change rights or obligations



Translated Contract Acknowledgment

Identification of Parties				
Customer Name ("you", "usted", "君", "본인", "あなた", "Name")				Contract Date
Address:	Street	City	State	Zip
Dealership	Buyer's Telephone			
Identification of Vehicle ("Vehicle", "Vehículo", "車輛", "차량", "車", "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.



Customer Signature/Nombre del Cliente

CHINESE/中文

車輛的出售或租賃主要以中文進行談判。您在簽署或簽訂合同或協議之前，確已收到完全填寫的中文版零售分期付款銷售合同（“合同”）或租賃協議（“協議”）。



Customer Signature/客戶簽名

KOREAN/한국어

차량 판매 또는 임대 에 관한 계약은 아래 명시된 기본 언어로 체결되었습니다. 귀하는 완전히 작성된 소매할부 판매계약서("계약서") 또는 임대약정서("약정서") 의 번역본을 받은 후에 영문으로 작성된 계약서 또는 약정서에 서명했습니다.



Customer Signature/고객 서명

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.



Customer Signature/Chữ ký của Khách Hàng

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.



Customer Signature/ Lagding Kasunduan

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.

車輛的出售或租賃主要以英語協商。

차량 판매 또는 임대 에 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.



Customer Signature

Spanish & Asian Language Transactions

(Continued)

- Use an Acknowledgment Form to best protect the dealership
- CNCDA and Reynolds & Reynolds are developing an updated Translated Contract Acknowledgment form to include co-signer signature line.
- New form should be available in the next few weeks.



A background image of a car dealership. Three people, a man in a suit, a man in a blue shirt, and a woman in a light-colored suit, are standing and talking near a white car. The scene is dimly lit, with the main focus on the people and the text overlay.

ORAL NEGOTIATIONS



Key Legal Concept: Negotiations

- Oral Statements can lead to lawsuits
- Lawsuits Against Dealers typically allege some form of misrepresentation
- Avoid Potentially Misleading Statements





Statements to Avoid

- Inaccurate Description of Purchase vs. Lease Options
- Demonstrators – described as New
- No Prior Damage Representations
 - Third Party Vehicle History Reports can be Inaccurate/Slow to Update
- Inaccurate Description of Factory Programs
 - Qualifications/Deadlines





Statements to Avoid

(Continued)

- Financing Representations
 - APR - Best Rate
 - Financing Contingent on Buying F&I Products
 - Refinancing Prospects
- Trade-In / Lease Return Treatment
 - Negative Equity
 - Over Allowance
- Service Contract/Warranty Descriptions
 - Bumper to Bumper Coverage



CREDIT APPLICATIONS





Credit Applications

- Key Concerns:
 - Covered by Many State and Federal Laws
 - No Discrimination Against – Applicants – Protected Basis (Race, Color, Religion, etc.)
 - Best Practice: Customer Complete in Their Own Handwriting (Especially Income Information) – No Blanks
 - Electronic Version - Follow Process/Confirm Income Information



Credit Applications

(Continued)

- Make Sure Customer Signs/Gets Copy
 - Authorization for Credit Report
- Phone applications problematic
- Record Retention
 - No Sale = Minimum of 25 Months
 - Sale = Minimum of 7 Years

Credit Reports

- Need Permissible Purpose
 - Written Authorization by Customer best
 - Payment by Check
 - Debt Collection
 - Other Purposes Risky to Rely on
- NOT PERMITTED
 - For Test Drive
 - Before Negotiations
 - For General Interest





Credit Score Exception Notice Form

- Handles Both Federal and State Law Requirements – Vendors Provide
- Required for Purchases and Leases
- Required For Every Credit Score Obtained
- Required for Both Husband and Wife





Adverse Action Notice

Dear Applicant:



Adverse Action Notice

- STATE AND FEDERAL LAW REQUIRE
- Adverse action notices to be given when:
 - Denial of credit following customer's application
 - Refusal to grant credit on terms requested by customer
 - (See NADA chart & guide; Chapter 7 of CNCDA F&I Manual)

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:

<input type="checkbox"/> Finance Director	<input type="checkbox"/> Other
Creditor Name	Company / Creditor Name
Address	Address
City, State	City, State
Zip	Zip
Telephone Number	Telephone Number

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 within 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:

<input type="checkbox"/> Equifax P.O. Box 740241 Atlanta, GA 30374 (800) 685-1111 www.equifax.com	<input type="checkbox"/> Experian P.O. Box 2104 Allen, TX 75013 (888) 397-3742 www.experian.com	<input checked="" type="checkbox"/> TransUnion P.O. Box 2000 Chester, PA 19022 (800) 888-4213 www.transunion.com	<input type="checkbox"/> Other Credit Reporting Agency Name Address City, State Zip Toll-Free Telephone Number
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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. 10/15)

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Adverse Action Notice (Continued)

- When 10-Day cancellation of contract – prudent to give notice
- Long term – Gives specific reason for credit denial
- Short form notice – provides for consumer to ask reasons

F&I PRODUCTS



Menus/ Worksheets

- Includes Four-Squares and Even Handwritten Notes
- Content/Impact Should Not Be Misrepresented
 - Incomplete or Misleading Product Descriptions
 - Realistic APR Examples
 - Binding Commitment Issues
 - Customer Signature
 - Purchase Order Status
 - Copy to Customer
 - Document Retention Requirements
 - Required Disclosures Not Included
 - Potential Single Document Rule Violation

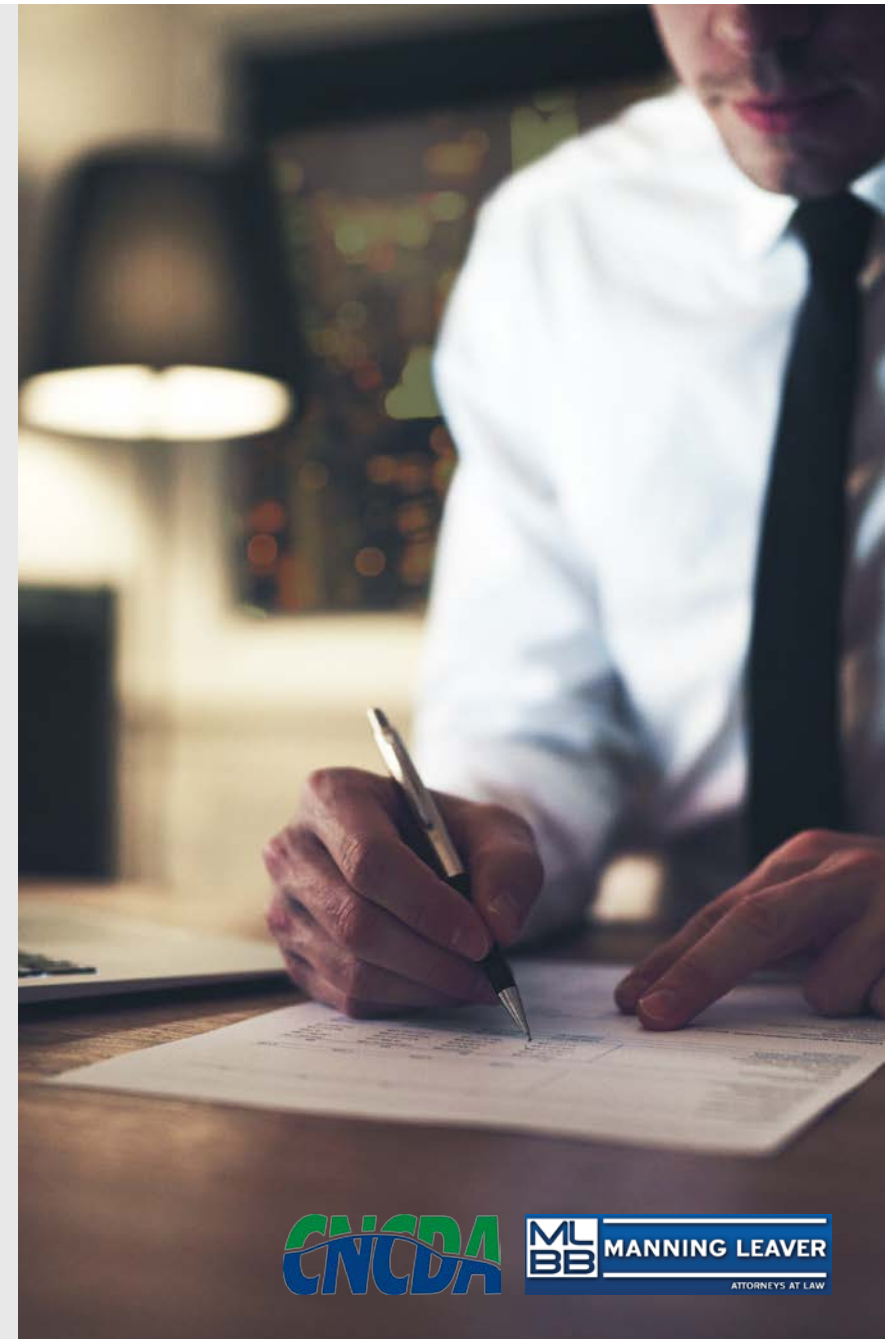
Anti Packing Rules

- Statutory Prohibition Against Packing – Vehicle Code § 11713.19
- General Rule – Prohibits Disguising Charges for Goods and Services
 - Inflated Payments
 - Extending Contract Term
- Consent Rule - Prohibits Adding Charges for Goods/Services
 - Unless Disclosure of Goods/Services to be Added and Customer Consent Obtained
- Best Practice – Disclose Basic Terms for Vehicle Purchase Before Any Goods/Services Added



Written Disclosure Requirement for F&I Products

- Statutory Disclosure Requirement – Civil Code §2982.2
- Applies to Purchases/Not Leases
- Six F&I Products
 - Service Contracts
 - Debt Cancellation Agreements
 - Insurance
 - Theft Deterrent Devices
 - Surface Protection Products
 - Contract Cancellation Option Agreement



**PRE-CONTRACT DISCLOSURE
(Retail Installment Sale Contract)**

Buyer Name(s) ("you")				
Address: Street		City	State	Zip
Year	Make	Model	VIN	
		Contract Date		

Optional Goods and Services

<input type="checkbox"/> Optional Theft Deterrent Device(s):	(1) _____	\$ _____
	(2) _____	\$ _____
	(3) _____	\$ _____
<input type="checkbox"/> Optional Surface Protection Product(s):	(1) _____	\$ _____
	(2) _____	\$ _____
<input type="checkbox"/> Optional Service Contract(s):	(1) _____	\$ _____
	(2) _____	\$ _____
	(3) _____	\$ _____
	(4) _____	\$ _____
	(5) _____	\$ _____
<input type="checkbox"/> Optional Debt Cancellation Agreement:	_____	\$ _____
<input type="checkbox"/> Optional Vehicle Contract Cancellation Option Agreement:	_____	\$ _____
<input type="checkbox"/> 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 FOLLOWING ADDITIONAL CHARGES:
Other Goods, Services and Miscellaneous Charges

Cash Price of Additional Accessories	\$ _____	Emissions Testing Charge	\$ _____
Other (Nontaxable)	\$ _____	Prior Credit or Lease Balance	\$ _____
	\$ _____		
EV Charging Station	\$ _____	Other (to whom paid) _____	\$ _____
Electronic Vehicle Registration	\$ _____	For: _____	
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 above described vehicle.
- The goods and services are not required as a condition to obtaining financing terms.
- 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.

Date	 Buyer's Signature	 Co-Buyer's Signature
------	---	--

Optional Products & Services Disclosure Form

- Make Sure Numbers Match Those Shown in RISC
- Confirms Disclosure of Other Goods/Services Provided and Customer Consent
 - Example - Dealer Document Processing Charge



SERVICE CONTRACTS

- Statutory Definition – Insurance Code §12800
 - A contract for a separately stated charge and a specific duration of time that covers the repair, replacement or maintenance of a vehicle
- Specific Disclosure/Inspection Requirements:
 - Contract must be available for inspection prior to purchase
 - Contract or brochure describing the terms, conditions, and exclusions must be provided at or prior to purchase
 - Contract must be delivered to buyer within 60 days of purchase date
- Avoid describing service contract as “warranty”
- Full Refund available if cancelled within 60 days for new vehicles, 30 for used

Optional Debt Cancellation Agreements

- Should Not Be Referred to as GAP Insurance
- **Important:** To avoid violating Reg Z and ASFA, the following should occur:
 - Customer understands the product is optional
 - The optional nature of the product is disclosed in writing
 - Customer signs a request for the product
- If complete properly, the LAW-553 contract satisfies the required written disclosures

Contract Cancellation Option Agreement

- Must Offer Used Vehicle Buyer Right to Purchase Contract Cancellation Option Agreement
- Statutory Requirements - Vehicle Code § 11713.21
 - Applies to Used Vehicles – purchase price under \$40,000
 - Cap on Amount Charged
 - 2 Day Deadline / Up to 250 miles
 - Cap on Restocking Fee
- Should complete form and document Customer decision to Decline



A smartphone is shown with a heavy metal chain wrapped around it, secured by a large padlock. The phone is placed on a dark wooden surface. The entire scene is framed by a white double-line border.

PRIVACY AND OTHER CONCERNS



Privacy Policy / Red Flags Rule / Safeguard Rule

- MAKE SURE PRIVACY NOTICES ARE ACCURATE AND CONSISTENT – CNCDA CCPA Compliance Handbook/New Law – Proposition 24
- RED FLAGS RULE
 - Make sure ID theft prevention policy in place
 - Make sure policy followed
- SAFEGUARD RULE
 - Make sure information protection policy in place to protect customer information
 - Make sure policy is followed

Other Screening/Reporting Requirements

- OFAC – Federal Requirement
 - Restricts Business with Terrorists
 - Credit Reporting Agencies/Vendors Provide Screening Service
- 8300 Cash Reports – Federal Requirement
 - More Than \$10,000 Cash Payments
 - IRS Form 8300 Reference Guide



QUESTIONS?

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