

F&I COMPLIANCE SERIES

Part IV: Post-Contract



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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 (January 2021)

Part II: Deal Documentation Compliance (February 2021)

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

Part IV: Post-Contract (Today)

Today's Agenda

1. Overview
2. Off-Site Deliveries
3. Contract Assignment
4. Right to Cancel, Rewrites, and Correcting Mistakes
5. Repossessions, Bounced Checks, Due Bills
6. Responding to Customer Complaints



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)

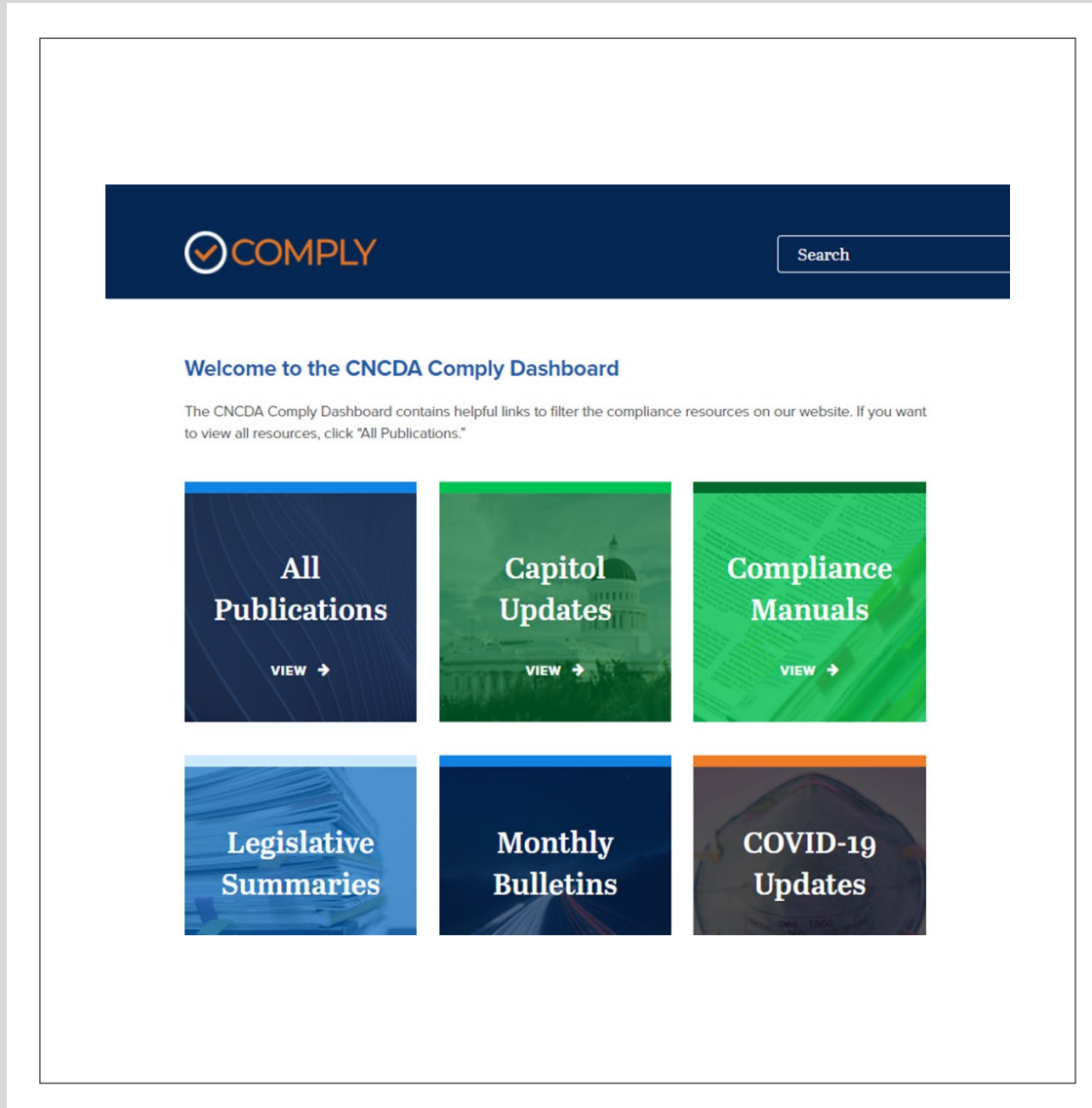
Resulting Process

- 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



The screenshot shows the CNCDA Comply Dashboard. At the top is a dark blue header with the 'COMPLY' logo on the left and a search bar on the right. Below the header is a welcome message: 'Welcome to the CNCDA Comply Dashboard' followed by a paragraph: 'The CNCDA Comply Dashboard contains helpful links to filter the compliance resources on our website. If you want to view all resources, click "All Publications."' Below this is a grid of six colored buttons, each with a title and a 'VIEW →' link. The buttons are: 'All Publications' (dark blue), 'Capitol Updates' (green), 'Compliance Manuals' (green), 'Legislative Summaries' (blue), 'Monthly Bulletins' (dark blue), and 'COVID-19 Updates' (dark blue).

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





OFF-SITE DELIVERIES





Off-site Deliveries

- DMV Recognizes - Can Be Done Subject To Certain Requirements
 - Terms of transaction to be negotiated prior to delivery
 - No selling activities at delivery
 - Dealership signs contract before delivery
 - Customer to have opportunity to review contract (and have copy) before signing
 - Confirm customer identity (follow dealership's Red Flags policy)
 - Follow health safety procedures

ASSIGNMENT OF CONTRACT/LEASE

ASSIGNMENT OF CONTRACT/LEASE

- Typical business practice
 - Dealers do not hold contracts
 - Follow terms of dealer agreements with financial institutions
 - Need to comply with representations and warranties
 - Valid contracts
 - Legally compliant
 - Confirm customer ID information (Red Flags rule)
 - Insurance coverage



INABILITY TO ASSIGN CONTRACT/LEASE

- Many factors impact decision
 - Credit approval
 - Conditional approval issue
 - May need stips
 - Tight time frame
 - Yoyo financing concern
- If financial institution will not accept assignment – 2 possible results
 - Dealer must act to cancel contract (within 10 days of signing) or
 - The contract remains enforceable– held by dealer



RIGHT TO CANCEL, REWRITES, AND CORRECTING MISTAKES



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.

Dealership Right to Cancel

- Contract right/not statutory right
- STRICT COMPLIANCE
 - Must precisely follow contract
 - Make sure cancellation provision is in lease
 - Or Dealership will be stuck with contract
- SHORT DEADLINE
 - 10 calendar days to assign contract
 - No extensions for chasing stip
- **IF NOT ASSIGNED MUST GIVE CANCELLATION NOTICE TO CUSTOMER BY 10th DAY**

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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 cancellation 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.

	<input type="text"/>
	Dealer Representative's Printed Name
<input type="text"/>	
Date	Dealer Representative's Signature
	<input type="text"/>
	Telephone Number

Dealership Right to Cancel (Continued)

◦ NOTICE REQUIREMENTS

1. Written Notice
2. Clear language cancelling contract
3. Deposit in first class mail by 10th day
(certified mail?)
4. Retain proof of mailing
5. Spanish Language version when applicable



Unwinding Deal After Contract Cancellation

- Important to know process
- Vehicle return / repossession
 - Return trade-in / down payment
 - Don't pay off too soon
 - Damage to vehicle / offset
 - Sales tax issue
- Document cancellation
 - Reynold form - example
 - DMV statements of facts
- Likely triggers duty to provide adverse action notice

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

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)

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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

Contract Rewrites

- Must be voluntary by customer
- Good to document
- Reynolds form example
- Do not back date
 - Factory incentive issues
 - New vehicle definition issue
 - Same buyer
 - Same vehicle



Correcting Contract Mistakes

- Always try to work out with customer
- Statutory approach for retail purchases – Civil Code §2984
 - 30 days to correct errors
 - Not willful
 - Does it increase contract balance? If so – customer must agree
 - Contemplated correction does not
 - Allow buyer to recover
 - Make the contract unenforceable
- Financial institution – contractual buy back right

REPOSSESSIONS, BOUNCED CHECKS, DUE BILLS



Repossessions

- Contractual right – Section 3d of 553
- Notice to cosigner to repossession (Civil Code §2983.35)
- Use licensed agency
- Peaceful – don't want to have incident
- Legal action
 - Claim and delivery
- Post repossession notice (Civil Code §2983.2)
 - Statutory requirements
 - Send within 60 days of repo/vehicle surrender
 - Right to reinstate/redeem
 - Written accounting following vehicle disposition

Bounced Checks

- Review circumstances
 - Insufficient funds
 - Stop payments
- Potential \$15 penalty regarding vehicle purchases
 - 553 Section 3e
- Penalty as to other transactions (leases) – Civil Code § 1719
 - Three times check amount
 - Not less than \$100
 - Not more than \$1000
 - Written notice required – Follow statutory requirements



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					
<p>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.</p> <p>A.1. _____</p> <p>A.2. _____</p> <p>A.3. _____</p> <p>A.4. _____</p> <p>A.5. _____</p>					
Section B: Acknowledgment of Accessories					
<p>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.</p> <p>B.1. _____</p> <p>B.2. _____</p> <p>B.3. _____</p> <p>B.4. _____</p> <p>B.5. _____</p>					

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

Due Bills

- Used to document accessories to be added after delivery
- Should not be separate agreement
 - Single document rule concerns
 - Reynolds form – good example
 - Language helps against “payment packing”
- Time limit issue

Lease Purchase Options

- Controlled by lease provisions
 - Option purchase amount
 - Official fees
 - Option fee
- Sell as used vehicle
- No vehicle safety inspection requirement (Vehicle Code 24007(a)(3))
- Pre-contract disclosure form



Lease Purchase Options (continued)

- Must offer contract cancellation option agreement (Vehicle Code 11713.21)
 - Restocking fee limit increased to include
 - Excess mileage
 - Unrepaired damage
 - Excess wear and tear
- CPO issues



RESPONDING TO CUSTOMER COMPLAINTS



Responding to Customer Complaints

- CLRA Letters
 - Response
- Summons and Complaint
 - Notify legal counsel
 - 30 days to file response
 - Retain and protect records
 - Notify insurance company
 - Get coverage denial in writing



Responding to Customer Complaints

(Continued)

- Lemon law cases
 - Factory indemnification issues
 - Follow formal process
- Arbitration strategy



QUESTIONS?

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