



# GUIDE FOR AUTO DEALERS



# THE BUYERS GUIDE

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*This document is intended to provide general guidance regarding laws applicable to motor vehicle dealers and is not meant to serve as a substitute for reading the various laws discussed, seeking legal counsel, or otherwise requesting Department guidance and/or interpretations on the laws it administers and enforces.*

The Federal Trade Commission's (FTC) Used Car Rule requires dealers to post a Buyers Guide in every used car offered for sale, including at auctions open to consumers.

### MAKE SURE YOU ARE FOLLOWING THE RULES

- Be sure to complete a Buyers Guide properly for each used vehicle you put up for sale.
- The Buyers Guide must be easily seen and displayed on both sides of the used vehicle. You may hang it from the rearview mirror, post it on windows or under the windshield wipers. You may remove the guide for a test drive, but must replace it once the test drive is over. You cannot put the Buyers Guide in the glove box, trunk or under a seat.
- When a sale is conducted in Spanish, the Buyers Guide must also be in Spanish.
- If your guide has a line for the buyer's signature, you must include a required disclosure for the consumer to acknowledge its receipt.
- The law requires your sales contract to include a specific disclosure explaining that the guide is a part of the contract.
- Give the consumer the Buyers Guide or a copy of it. Ensure that it states the final negotiated warranty coverage.
- When offering a written warranty be sure that it complies with federal law and is available for examination by potential buyers. The Buyers Guide is **NOT** sufficient to convey the actual written warranty. They **MUST** be separate documents.

### WHAT THE GUIDE TELLS CONSUMERS

- If the vehicle has a warranty or will be sold "as is."
- What percentage of repair costs the dealer will pay under the warranty.
- That oral promises are hard to enforce and to get them in writing.
- To keep the Buyers Guide for reference after the sale is complete.
- The major mechanical and electrical systems on the car, as well as some of the major problems that consumers should look out for.
- To request that the vehicle be inspected by an independent mechanic before the transaction is complete.
- To get a vehicle history report and to check for safety recalls, visit [ftc.gov/usedcars](https://www.ftc.gov/usedcars) for information.

### NONCOMPLIANCE

Dealers who violate the Used Car Rule may be subject to **penalties up to \$46,517 per violation (subject to change)**. For more information, head to [ftc.gov](https://www.ftc.gov).

BUYERS GUIDE			
<small>IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.</small>			
<small>VEHICLE MAKE</small>	<small>MODEL</small>	<small>YEAR</small>	<small>VEHICLE IDENTIFICATION NUMBER (VIN)</small>
<b>WARRANTIES FOR THIS VEHICLE:</b>			
<input type="checkbox"/> <b>AS IS - NO DEALER WARRANTY</b> <small>THE DEALER DOES NOT PROVIDE A WARRANTY FOR ANY REPAIRS AFTER SALE.</small>			
<input type="checkbox"/> <b>DEALER WARRANTY</b>			
<input type="checkbox"/> FULL WARRANTY.			
<input type="checkbox"/> 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.			
<small>SYSTEMS COVERED:</small>		<small>DURATION:</small>	
<b>NON-DEALER WARRANTIES FOR THIS VEHICLE:</b>			
<input type="checkbox"/> MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on some components of the vehicle.			
<input type="checkbox"/> MANUFACTURER'S USED VEHICLE WARRANTY APPLIES.			
<input type="checkbox"/> OTHER USED VEHICLE WARRANTY APPLIES.			
<small>Ask the dealer for a copy of the warranty document and an explanation of warranty coverage, exclusions, and repair obligations.</small>			
<input type="checkbox"/> SERVICE CONTRACT. A service contract on this vehicle is available for an extra charge. Ask for details about			

# WHAT DEALERS SHOULD KNOW ABOUT ADVERTISING

The following advertisement methods are subject to regulation by SCDCA:

- Verbal/oral ads
- Written ads
- Graphic/picture ads

Advertisements published via any and all advertising media are subject to regulation. This includes:

- Radio
- Television
- Magazines
- Newspaper
- Internet
- Shopping Guides



## ADVERTISEMENTS MUST

- Include the name of the motor vehicle dealer making the offer.
- If a price is quoted:
  - 1 it must include any closing fee, and
  - 2 the ad must clearly identify that vehicle's **make, model and year** and if it is **new or used**.
- If a rebate is advertised for the sale OR lease of a vehicle, it must be one that is available to the **majority of the buying public**.
- When offering discounts on the sale or lease of a new vehicle, **discounts must be deducted from the MSRP of the vehicle as stated on the Monroney sticker**. If the discount is not deducted from the MSRP, the **pre-discounted** price as well as the discounted price should be displayed.
- No qualification such as "with trade" or "with down payment" may be used.
- Comply with **Federal Truth in Lending Act and Regulation Z** when making credit advertisements.
- Comply with **Federal Consumer Leasing Act and Regulation M** when making lease advertisements.

## ADVERTISEMENTS MUST NOT



- Be false, deceptive, misleading, or misrepresent a vehicle.
- Use statements that **guarantee the value or range of value** for trade-in vehicles.
- Use the term "free" when the purchase or other consideration is required to obtain the supposed "free" item or service.
- Imply that the dealer has a special arrangement with the manufacturer that is not available at similar dealerships.
- Offer a **rebate** as part of the **advertised price of the vehicle that is not available to the majority of the buying public**. The amount of the rebate may be listed as an additional incentive to those who qualify.



**Dealers must sell a vehicle for the advertised price, with three exceptions:**

- 1 The ad clearly and conspicuously discloses that a consumer must present or mention the ad to get that price.
- 2 The dealer posts a coupon that must be presented to receive a discounted purchase price.
- 3 The ad states that the price and terms are good only for a specific period of time and such time has passed.

## CLEAR AND CONSPICUOUS LANGUAGE IN ADVERTISING

- The statement, representation or disclosure regarding a vehicle for sale or lease must be **easily noticed and understood**.
- All language and terms, including abbreviations, must be used in accordance with their common usage and meaning.
- When utilizing print ads, **eight point type or larger** must be used in all disclosures.
- In broadcast ads, any spoken statements must be **understandable in pace and volume**. Any visual statements must be displayed so that the average viewer can easily read it. **It must equal the size of twenty scan lines and appear continuously for at least five seconds**.



**Violation of the rules can result in fines of up to \$10,000.**

*Auto dealers are responsible for the content and form of their ads. Advertising agencies or other third parties will be considered agents of the auto dealer and the dealer will be held accountable for failure to comply with rules.*

## PENALTIES FOR NONCOMPLIANCE

SCDCA may issue the following penalties to dealers violating the advertising rules. Each notice received by the dealer for a related offense serves as an additional violation.

- 1st Violation: Written warning.
- 2nd Violation within 6 months: \$500 fine.
- 3rd Violation within 6 months: Up to \$1,000 fine.
- 4th Violation within 6 months: Up to \$10,000 fine.

If SCDCA finds a new violation (i.e., one not related to a prior offense) or if six months has passed since an initial warning notice was issued, the process starts over again with a written warning.

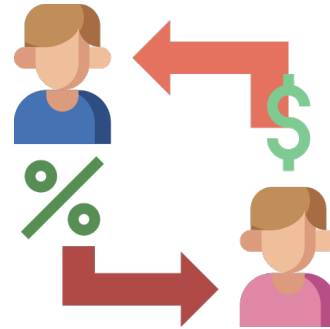
*Continued violations may be considered grounds for revocation, suspension, and non-renewal of a dealer license.*



# TILA & RECURRING ISSUES

## TRUTH IN LENDING

- The Truth in Lending Act (TILA) requires creditors to provide meaningful and accurate disclosures of credit terms.
- Auto advertisements promoting closed-end credit transactions must disclose clearly and conspicuously credit information, including:



- 1 amount/percent of down payment,
- 2 terms of repayment,
- 3 the actual cost of credit as a dollar amount and as an annual percentage rate (using that term).

## RECURRING ISSUES

Here are the most common recurring issues that SCDCA sees:

### Advertising Violations

- Over a third of the issues identified generally deal with TILA violations. The majority involve a failure to disclose required terms after a triggering term is made. Not using the term "annual percentage rate" or "APR" is also a common violation.
- Specifically saying a closing fee is excluded from an advertised price normally ranks in the top three categories of violations.
- Other recurring issues include not disclosing if a vehicle is new or used and failing to disclose proper terms according to the Consumer Leasing Act.

### Closing Fee Application

- Including expense line items that are not permissible in the calculation to determine the closing fee. *Example:* Car detailing, fuel expense, delivery charges.
- Including compensation for employee duties that are not related to the closing process.
- Including the **total costs** of dealer operating expenses as opposed to only closing related costs.  
*Example:* IT systems, office supplies, shredding and retention expense.

### FILE ONLINE

#### How to File with SCDCA:

Registered Creditor filings must be renewed annually before January 31st.

Click "Online Filing: Licensure Gateway" under the "Business Resources" header for links to filing instructions, flowcharts and video tutorials to help make sure your filings are accurate.

SCDCA posts maximum rates and closing fees under the "Licensee Lookup" tab on our website.

# SCDCA REQUIRED FILINGS

## 1 CREDIT GRANTOR

Auto dealers that make consumer credit sales or consumer leases in SC must file Credit Grantor Notifications with the SCDCA unless the annual gross sales for the business are less than \$150,000.



### Auto Dealers Do Not Make Loans

A credit sale is when a business sells an item to a consumer to pay over time (i.e., retail installment contract). This includes when a consumer completes finance paperwork at the dealership. A consumer loan on the other hand is when a business gives a consumer money so the consumer can purchase an item from another business.

## 2 MAX RATE

Auto dealers that intend to impose an annual finance charge in excess of 18% APR on credit sales must file a Maximum Rate Schedule with the SCDCA and post it at the dealership. Auto dealers that don't file for a rate above 18% are limited to imposing an APR of 18% or below.

## 3 CLOSING FEES

A **closing fee** is defined as a fee charged for all administrative and financial work needed to transfer the motor vehicle to the consumer, person or entity including, but not limited to:

- Compliance with all state, federal and lender requirements, including the protection of the consumer's private personal information,
- Preparation and retrieval of documents,
- Related records retention and storage costs.

**If an auto dealer intends to charge a closing fee on a motor vehicle sales contract they must:**

- Pay a \$25 registration fee annually to SCDCA. If the closing fee is \$225 or less, it is automatically approved. *Over \$225:* The Department may review the amount of the closing fee for reasonableness.
- Include the closing fee in the advertised price of the motor vehicle, disclose it on the sales contract, and display it in a conspicuous location in the dealership.



Dealers are NOT required to charge a closing fee. If they choose to do so, it is illegal to tell a consumer that the fee is required or otherwise non-negotiable.



# DEBT COLLECTION & CHARGES

## DEBT COLLECTION & REPOSSESSION PROCEDURES

**When a consumer misses a required payment, the auto dealer must issue a “right to cure” notice before repossessing the vehicle.**

- The auto dealer may not send the notice until the consumer has been delinquent for at least 10 days.
- After issuance of the notice, the consumer has 20 days to make the missed payment.
- If the consumer makes the payment within the allotted 20 days, it is as though the default never occurred. However, if it is a closed-end transaction, and the consumer defaults again, a right to cure notice is not required.
- An auto dealer CANNOT require the consumer to waive their right to receive the right to cure notice.
- When hiring a third party repossession company to retrieve property, the auto dealer is responsible for that company's actions.



Visit our “Business Education & Tools” webpage for (1) a flowchart to help you determine if a notice of a right to cure is required and (2) guidance regarding the timing and content requirements for a notice.

## LIMITS ON FEES & CHARGES

The Consumer Protection Code limits fees and charges for creditors. Here are some examples:

- 1** The maximum late fee permitted is 5% of the installment payment not to exceed \$21.00 (This amount is subject to change July 1 of every even-numbered year. Check SCDCA's website for the most up-to-date info.)
- 2** Prepayment penalties on sales or loans are prohibited.
- 3** A transaction fee imposed by the DMV as part of the Electronic Lien and Titling (ELT) program is an official fee that can be assessed by a creditor as a permissible additional charge. A fee imposed by a third party to facilitate an ELT transaction must be absorbed by the creditor or included in the finance charge.

# LEMON LAW & GAP

## THE LEMON LAW

A “lemon” is:

- 1** A new private passenger vehicle (i.e., car, truck, van, or motorcycle);
- 2** With a defect that impairs its use, safety or will lower its market value substantially;
- 3** And which the manufacturer cannot repair in a reasonable time.

**Reasonable time** is considered to be three repair attempts for the same defect or 30 or more days out of service for repairs. The 30 days do not have to be consecutive.



Vehicles are not covered if the defects are due to the owner's abuse, neglect or unauthorized alteration of the vehicle; or if the defect(s) don't show up within the first 12,000 miles or 12 months, whichever comes first.

## GUARANTEED ASSET PROTECTION

Guaranteed Asset Protection (GAP) may be sold in South Carolina as a debt cancellation contract. **GAP is not insurance. Here are some key rules to know and follow:**

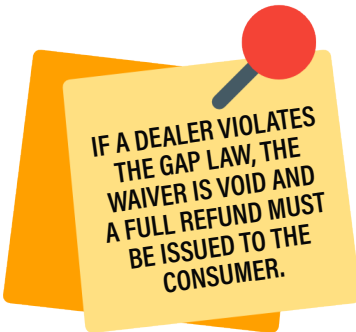
- The purchase of a GAP waiver is optional. A dealer cannot require a consumer to buy it in order to get credit, to obtain certain terms of credit or to purchase the related vehicle.

A dealer **cannot** offer GAP if:

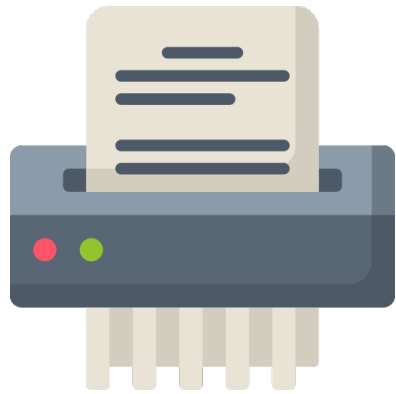
- A** The loan is for an amount less than \$4,000 or a duration less than 12 months;
- B** The vehicle does not qualify for or conflicts with any restrictions or limitations of the GAP product;
- C** The amount financed is less than 80% of the manufacturer suggested retail price for a new vehicle or the average retail value for a used vehicle (i.e., NADA, Bluebook); or
- D** They do not reasonably believe the borrower will benefit in the event of a covered total loss.

GAP is a permissible additional charge and:

- A** Dealers must allow at least 30 days to cancel the GAP waiver without any penalties.
- B** Must remain a part of the finance agreement upon its assignment, sale or transfer by a creditor.
- C** Dealers must report the sale of and forward funds received on all waivers to the designated party, if any, as prescribed in an applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.



## RECORDS DISPOSAL



### STATE LAW:

- Businesses must make consumer's personal identifying information (PII) unreadable or undecipherable when disposing of records.
- Businesses must also remove PII from hardware, storage media and other items before selling, transferring or otherwise disposing of the item.

### FEDERAL LAW:

- Any business or individual who uses a consumer report for business purposes is subject to the Federal Disposal Rule. The Rule requires that reasonable measures be implemented to ensure the proper disposal of information in consumer reports and records and prevent the unauthorized access to and use of the information.

## Gramm-Leach-Bliley Act

This Act and the Safeguards Rule put safety requirements on **financial institutions (including auto dealers)** with regards to consumers' personal information.

Requirements include:

1. Implement an information security program containing safeguards addressing access controls, data inventory and classification, encryption, secure development practices, authentication, information disposal procedures, change management, testing, and incident response.
2. Designate a single qualified individual to oversee your information security program and report periodically to the board of directors or governing body.

## SECURITY BREACH NOTIFICATION

**Auto dealers must notify South Carolina consumers in the event of a breach.**

A security breach is the unauthorized access to, and acquisition of:

- 1 Items containing PII not rendered unusable through encryption or other method;
- 2 Where the illegal use of this information has occurred or is likely to occur.

The disclosure of the breach must be made within a reasonable time from its discovery. If a breach affects more than 1,000 SC residents at one time, the business must also notify SCDCA and the major credit reporting companies.



## STATE AGENCIES

### SC Department of Motor Vehicles

[www.scdmvonline.com](http://www.scdmvonline.com) or (803) 896-5000

- Dealer Licensing
- Titles

### SC Department of Consumer Affairs

(see contact information on back page)

- Debt Collection/Repossession
- Consumer Credit Sales, Loans or Leases
- Automobile Advertising
- Lemon Law
- Finance Charges, Closing Fees and GAP
- Records Disposal and Security Breaches

## FEDERAL AGENCIES

### The Federal Trade Commission

[www.ftc.gov](http://www.ftc.gov) or 1 (877) FTC -HELP

- Records Disposal
- Safeguards Rule
- Gramm-Leach-Bliley Act
- Buyers Guide/Used Car Sales Rule
- Holder in Due Course Rule
- Credit Practices Rule
- Truth in Lending Act
- Consumer Leasing Act
- Equal Credit Opportunity Act
- Magnuson-Moss Warranty Act
- Regulation of Smaller "Buy Here, Pay Here" Dealers

### Consumer Financial Protection Bureau

[www.consumerfinance.gov](http://www.consumerfinance.gov) or (855) 411-CFPB

- Regulation of Larger "Buy Here, Pay Here" Dealers





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