



The State of South Carolina  
 Department of Consumer Affairs

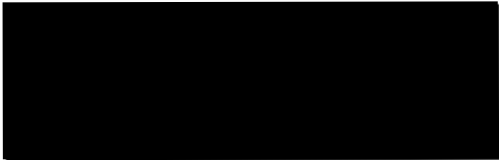
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*Celebrating Over 40 Years of Public Service*  
 February 22, 2016

*Via US and Electronic Mail*



Administrative Interpretation 30.120.1601

**RE: Opinion Request- GAP Waivers and Valuation Guides**

Dear

You have requested an opinion regarding the sale of guaranteed asset protection (“GAP”) waivers. The GAP product is governed by the South Carolina Consumer Protection Code (“the Code”), Title 37, South Carolina Code of Laws<sup>1</sup>, specifically §§ 37-30-100 *et seq.* From the information you have provided, the following question has been posed and will be addressed herein in the form of a general answer that could change depending on specific circumstances:

Is the reference to “National Automobile Dealers Association” (NADA) in §37-30-120(1)(1)(b) meant to specifically only permit the use of the NADA guide or used as a generic reference to permit use of the NADA guide or a similar valuation guide?

Beginning December 1, 2015, GAP waivers may only be sold in South Carolina in compliance with §§ 37-30-100 *et seq.* The law provides several consumer protections, including in §37-30-120(1). This section prohibits the sale of a GAP waiver to a consumer when “the amount financed, less the cost of the GAP waiver, the cost of credit insurance and the cost of service contracts is less than eighty percent of the manufacturer suggested retail price for a new vehicle or *the National Automobile Dealers Association average retail value for a used vehicle.*” *Emphasis added.* §37-30-100(1)(1)(b).

The cardinal rule of statutory construction is to ascertain and effectuate the Legislature’s intent from the plain language of the statute. Burns v. State Farm Mut. Auto Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). The words of a statute must be given their plain meaning and consistently construed within the parameters of the statute’s purpose and subject. Ga. Carolina Bail Bonds, Inc. v. City of Aiken and Goddard, 354 S.C. 18, 23, 579 S.E.2d 334, 336 (Ct. App. 2003).

<sup>1</sup> Further reference to the South Carolina Code of Laws will be by Code section only.

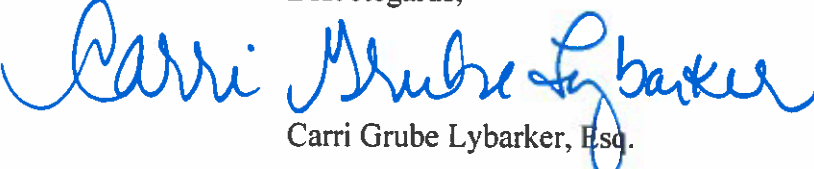
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The Department does not believe the Legislature intended to limit sellers of GAP only to utilizing the NADA valuation guide when determining if the product sale is permitted. Rather, the reference to "National Automobile Dealers Association average retail value" is an indication that the Legislature intended that only those valuation guides generally used and relied upon in the industry as a source for used vehicle value may be referenced. Such reasoning is in line with Court holdings which have recognized the NADA handbook and Kelley Blue Book as standard tools for determining a vehicle's value. See Hess v. Riedel-Hess, 153 Ohio App.3d 337, 794 N.E.2d 96 (O.H. 2003); In re McLean Trucking Co., 281 N.C. 375, 189 S.E.2d 194 (1972).

While the use of valuation guides generally recognized and acceptable in the industry is permitted, this opinion does not condone the practice of "shopping around" by the seller in an effort to evade the law's intent. GAP waiver sellers should utilize the same valuation guide consistently and document such use for compliance purposes.

I hope this fully answers your question. Please do not hesitate to contact me directly at 803-734-4233 should you need any further information.

Best Regards,



Carri Grube Lybarker, Esq.