

Highlights of GAP Changes in California – Effective 01/01/23

CA Assembly Bill 2311 becomes law on January 1, 2023 and amends sections of the California Civil Code.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2311

Most importantly, section 2982 was added to the California Civil Code that necessitates the following changes to our GAP contract form and associated business processes for the state of California:

1. Rates

No change to Selling Dealer's existing rates.

2. California State Specific Forms

Changes reflected below necessitated the need for CA specific GAP Waiver forms. All sellers will need to have a CA specific GAP Waiver form beginning 1/1/13. This applies to all vehicle types (auto, RV, PS and Marine).

3. Required Disclosure on New California forms

The following disclosure is now required to be on page 1 of all California GAP Waiver forms. The heading is in 12-point bold type. The text is 10-point bold type.

STOP AND READ:

YOU CANNOT BE REQUIRED TO BUY A GAP WAIVER OR ANY OTHER OPTIONAL ADD-ON PRODUCTS OR SERVICES. IT IS OPTIONAL.

NO ONE CAN MAKE YOU BUY A GAP WAIVER OR ANY OTHER OPTIONAL ADD-ON PRODUCTS OR SERVICES TO GET FINANCING, TO GET CERTAIN FINANCING TERMS, OR TO GET CERTAIN TERMS FOR THE SALE OF A VEHICLE.

IT IS UNLAWFUL TO REQUIRE OR ATTEMPT TO REQUIRE THE PURCHASE OF THIS GAP WAIVER OR ANY OTHER OPTIONAL ADD-ON PRODUCTS OR SERVICES.

4. Loan to Value (LTV) Limitation on GAP Waiver Forms

Section 2982.12 of the new law states that it must be acknowledged by the Buyer in writing that the conditional sale contract exceeds the GAP Waiver's maximum loan-to-value limitation. Because this requirement would be difficult to impossible to implement, all CA GAP Waiver forms now no longer have a limitation on a deficiency that results from an original amount financed that exceeds a percentage of MSRP for new vehicles or NADA guide books amount for used vehicles deducted from the Outstanding Balance.

5. Cancellation (Fees and Refund requirement)

Cancellation Fees are now no longer allowed in California and have been removed. The refund payment must be issued within 60 days of cancellation date. If an amount is waived for a Total Loss, GAP Waiver becomes fully earned and no refund. Cancellation language formerly stated “whether or not a deficiency was waived”.

6. New Cap on Retail Price

A GAP Waiver’s retail price charged to a buyer may not exceed 4% of the amount the buyer’s finances under a conditional sale contract under Section 2982.12. A regulated rule is added in SCS that completes a calculation to determine if the retail cost has pierced the 4% threshold. SCS shows the maximum allowable retail cost that may be used. The retail cap requirement has not been added to the form as it is not required to do so.

7. Amount Financed - Minimum Loan to Value (LTV) Threshold

The amount financed through a conditional sales contract cannot be less than 70% of the MSRP for new vehicles and average retail value (NADA) for used vehicles. In other words, a GAP Waiver can’t be sold if the LTV is 70% or below.

8. Maximum GAP Benefit

The amount financed through the conditional sales contract cannot exceed a maximum dollar amount waived by the GAP waiver. A GAP waiver cannot be sold if the amount financed is higher than the max liability amount for the coverage benefit on the GAP waiver. As this could occur in some instances, the maximum coverage benefit liability limitation has been removed.