

Rule 8 Permissible Additional Charges - Guaranteed Automobile Protection

A fee or charge for guaranteed automobile protection ("GAP") may be contracted for and received as an additional charge if all of the conditions listed below are met. Failure to comply with all provisions of this rule shall mean that the fee or charge for GAP is not a permitted additional charge under Uniform Consumer Credit Code ("UCCC") § 5-2-202(1)(d). This rule is inapplicable to GAP included in consumer leases, to other debt cancellation agreements in consumer credit sales or consumer loans that do not meet this definition, and to transactions not subject to the UCCC.

(a) GAP means an agreement structured as either an insurance policy or a contractual term sold or written in consumer credit sales [5-1-301(11)] or consumer loan transactions [5-1-301(15)] that relieves the consumer of liability for the deficiency balance remaining after the payment of all insurance proceeds (or deducting the amount that would have been paid if the contractually required insurance had been maintained at the time of the loss) for property damage upon the total loss of the consumer's automobile(s) that was collateral securing the credit sale or consumer loan, whether the loss occurred from the total destruction of the vehicle, the theft of the vehicle, or both. "Automobile" includes any motor vehicle that may be used as collateral securing a consumer credit transaction.

(b) The consumer must provide affirmative written authorization for the purchase of GAP after receiving written notice of the following in bold face type before credit is extended:

(1) that the purchase of GAP is not required in order to obtain the credit or any particular or favorable credit terms;

(2) the fee or premium for GAP;

(3) that the consumer may wish to consult an insurance agent to determine whether similar coverage may be obtained and at what cost;

(4) that GAP benefits may decrease over the term of the consumer credit sale or consumer loan;

(5) that the consumer may cancel GAP for any or no reason within thirty (30) days after GAP was

purchased and receive a full refund of the GAP fee or premium so long as no loss or event covered by GAP has occurred; and,

(6) GAP is not a substitute for collision or property damage insurance.

(c) At the time the consumer provides affirmative written authorization to purchase GAP, the creditor shall provide the consumer with a separate written cancellation form. The form shall:

(1) include the name and mailing address to be used to cancel GAP;

(2) state clearly and conspicuously that the consumer has an unconditional right to cancel GAP for a full refund within thirty (30) days after it was purchased; and,

(3) state that in order to cancel GAP, the consumer must complete and return the form or send any other written notice of cancellation to the address provided postmarked no later than thirty (30) days after GAP was purchased.

(4) As an alternative to (c)(3), the creditor may provide an alternative cancellation method as long as it is clearly and conspicuously displayed in the GAP waiver agreement.

(d) At the time the consumer provides affirmative written authorization to purchase GAP, the creditor must deliver to the consumer the GAP insurance policy, certificate, or written description of GAP's benefits, terms, conditions, and exclusions and the procedure and timing to be followed to make a claim after a total loss.

(e) GAP must pay or forgive the deficiency balance owed by the consumer at the time of the total loss with the exception of amounts previously owed for unpaid installments, legally permitted delinquency fees, fees for the return or dishonor of checks or other instruments tendered as payment, premiums for creditor-imposed property damage insurance, refunds on service contracts and other protection products that were financed on the credit agreement, the salvage value of the vehicle if the totaled vehicle is retained by the consumer, prior unrepaired damage to the vehicle which is supported by clear written documentation (such as on the primary carriers insurance settlement which triggered the GAP claim) and deferral fees. GAP must pay or forgive the deficiency balance that would have been owed if the consumer had maintained property damage insurance on the automobile (even if the consumer has not done so) or if the creditor has purchased property damage insurance for the automobile and added it to the amount of the debt pursuant to UCCC § 5-2-209, C.R.S.

(f) As part of payment of or relief from liability of the deficiency balance, GAP must provide the consumer

with a full refund or credit of the amount of the consumer's deductible for property damage insurance up to an amount including five hundred e(\$500) dollars. Additional coverage for the consumer's deductible in excess of \$500 may be provided.

(g) GAP may not be sold pursuant to this rule if (1) the consumer; (2) the credit terms including but not limited to cash price, automobile value or amount financed; or, (3) the automobile used as collateral for the credit transaction, does not qualify for any coverage or any debt cancellation under the or is in conflict with any restrictions or limitations of the GAP policy or contract conditions. Any such unless the limitation will be is clearly and conspicuously stated in the GAP agreement. For example:

(1) if-GAP may not be sold if it will not provide coverage or debt cancellation for identified automobile makes and models frequently subject to theft or to consumers living in certain neighborhoods, it may not be sold pursuant to this rule if the automobile securing the loan is one of the identified makes and models or if the consumer lives in an excluded neighborhood; or,

(2) if-GAP willmay not be sold if it does not provide any coverage or any debt cancellation if the automobile sale price is more than the manufacturer's suggested retail price ("MSRP") or if the retail value of the automobile exceeds 120% of "Blue Book" value, it may not be sold pursuant to this rule if the price exceeds the MSRP or if the loan to value ratio is 125%, unless it provides coverage up to the stated caps and such limit is clearly stated in the GAP agreement.

In addition, GAP may not be sold pursuant to this rule if the transaction would be unconscionable pursuant to UCCC § 5-4-106, 5-5-109, or 5-6-112, C.R.S.

(h) If the consumer credit sale or consumer loan is prepaid prior to maturity or the vehicle is no longer in the consumer's possession due to the creditor's lawful repossession and disposition of the collateral, and if no GAP claim has been made, the creditor must refund to the consumer the unearned fee or premium paid for GAP. If GAP was provided as a contractual term, the refund shall be made using a pro-rata method. If GAP is determined to be insurance, the refund method used shall be any method authorized under applicable insurance statutes, rules, or interpretations of the Colorado Division of Insurance.

(i) Only one fee or charge for GAP may be contracted for and received regardless of the number of co-borrowers, co-signers, or guarantors in the credit transaction. In the event that GAP has been sold and a valid claim has been made, the creditor may not seek indemnification from the consumer, co-borrowers, co-signers, or guarantors.

(j) A consumer shall have ninety (90) days after the loss settlement from any property damage insurance or from the date the creditor notifies the consumer of any deficiency balance owed, whichever is later, to file a GAP claim or seek debt cancellation from the creditor.

(k) The maximum fee that may be charged for GAP shall not exceed 5% of the amount financed~~the following:~~

~~\$300 or 2% of the amount financed, whichever is higher.~~

This provision (k) shall not apply to any GAP insurance that is subject to regulation by the Colorado Division of Insurance.

(l) Every provision of this rule applies equally to any assignee or holder of a consumer credit sale or consumer loan containing a fee or charge for GAP. No creditor, assignee, or holder shall have any subrogation rights against the consumer.

(m) Every consumer credit sale or consumer loan that includes a fee or premium for GAP shall contain in the written agreement signed by the consumer a provision substantially similar to the following:

If this transaction contains a fee or premium for guaranteed automobile protection, all holders and assignees of this consumer credit transaction are subject to all claims and defenses which the consumer could assert against the original creditor resulting from the consumer's purchase of guaranteed automobile protection.