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Administrative Interpretation No. 5.110-7703 (Reconsideration)

PROVISIONS CONCERNING NOTICE OF THE CONSUMER'S RIGHT TO CURE AND CURE OF DEFAULT APPLY TO SECURED SINGLE PAYMENT LOANS.

We have reconsidered the above interpretation in response to your request of May 20, 1977 under Rule 28-25.3 of the rules implementing the Consumer Protection Code and conclude that the interpretation as written is correct.

First, we base our interpretation of the cure provisions on the language of the sections themselves. Both Sections 5.110 and 5.111 refer to a "consumer credit transaction" with no exceptions. The term "consumer credit transaction" includes a single payment loan. See Consumer Protection Code Sections 1.201(7)(b) and 3.104. If the drafters had intended to exclude single payment transactions they could have done so expressly simply by limiting the sections to those consumer credit transactions "payable in instalments" as that term is defined in Section 1.301(12).

Kansas, a Uniform Consumer Credit Code State, amended Section 5.110 to read in part, "after a consumer has been in default for ten (10) days for failure to make a required payment in a consumer credit transaction payable in installments..." and Section 5.111 to read "... after a default consisting only of the consumer's failure to make a required payment in a consumer credit transaction payable in installments...." If the South Carolina General Assembly had intended to limit these sections to instalment transactions, it could have clearly said so as the Kansas legislature did. We follow the plain meaning of the term "consumer credit transaction" to include single payment transactions unless there is a clear intent expressed otherwise to limit the coverage of these sections to instalment transactions.

In your argument to support your opinion that single payment consumer loans are not intended to be covered by the cure provisions, you referred to language in the notice contained in Section 5.110. However, the suggested form of notice in that section is not required and may be modified to conform

to the particular default situation prompting it, so long as the required elements of the notice set forth in that section are included. Also, the language you relied on does not require the conclusion you reached. The phrase "you may continue with the contract as though you were not late" may simply refer to the fact that if payment is made by the last day to cure the default, the creditor will not proceed against the secured property as he could if the consumer remained in default.

Next you referred to the comments to the Official 1974 Text of the Uniform Consumer Credit Code to support your view that single payment loans are not intended to be covered by the cure provisions. While it is true that the reference to a "continuing contractual relationship" may concern an instalment transaction, the comments are intended to be used to explain what is meant by the provisions and not to modify the law itself. No doubt the usual transaction which will be affected by the cure provisions is the instalment transaction. In their comments, the drafters appear to be using the instalment transaction to illustrate the operation of the cure provisions. However, nowhere in the comments is it said that these provisions are not intended to apply to a single payment transaction as well. Also, a deferral arrangement, referred to in the comments, could apply to a single payment transaction. Again, if a limitation had been intended, the drafters could have made clear in the comments what was not made clear in the law.

You said in your request for reconsideration on page two (2) that "[t]he drafter of the interpretation apparently felt that the addition of the restriction on repossession evidenced an intent to have the cure procedure applied to single payment secured transactions." Actually, we based our conclusion that these provisions apply to secured single payment loans by deducing that (1) Section 5.111 affects the remedies of a creditor in connection with a consumer credit transaction after a default consisting only of the consumer's failure to make a required payment; (2) "consumer credit transaction" includes a single payment loan; (3) the remedies affected are acceleration of maturity and enforcement of a security interest in goods that are collateral; (4) a creditor of a single payment loan could not accelerate maturity because the loan has already matured but could enforce a security interest if the transaction were secured; (5) therefore a creditor of a secured single payment loan may not enforce a security interest after default for failure to make a required payment until twenty (20) days after

notice of the right to cure is given. Thus while Section 5.111 does not affect the creditor of a secured single payment loan with regard to acceleration, it does affect his remedy of enforcing a security interest. In contrast, a creditor of a secured instalment transaction would be affected by the cure provisions with regard to both his remedy of acceleration and his remedy of enforcing a security interest.

We do not see this interpretation resulting in a "penalty" on a creditor's accepting security for a single payment loan as you suggest. The creditor's right to attempt immediate collection would not be affected by the cure provisions. Thus, with respect to attempting collection, secured and unsecured single payment transactions would be in the same position. Likewise, your concern that a consumer could delay paying the single payment in a secured transaction for a minimum of thirty (30) days should not affect our conclusion. The original agreement between the creditor and the consumer could be such that the creditor would be assured of a fair return in the event of delayed payment.

There are two remaining factors that lead us to our conclusion. First, the Consumer Protection Code, a version of the Uniform Consumer Credit Code, has as one of its purposes to make uniform the law among the various jurisdictions. Consumer Protection Code Sections 1.102(2)(g) and 6.104(3). This question has been discussed with other Code States having similar provisions and they agree with this interpretation. Furthermore, Section 1.102(1) provides that "[t]his act shall be liberally construed and applied to promote its underlying purposes and policies." (Emphasis added) We believe that our interpretation of Sections 5.110 and 5.111 is consistent with this requirement.

After reconsidering Interpretation No. 5.110-7703, we are of the opinion that this interpretation of the cure provisions' application to secured single payment loans is correct.

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