



IRVIN D. PARKER  
ADMINISTRATOR

# The State of South Carolina

## Department of Consumer Affairs

2221 Devine Street  
P. O. BOX 5757  
COLUMBIA, S. C. 29250  
(803) 758-2040

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August 16, 1977

Administrative Interpretation No. 5.110-7711

### NOTICE OF THE CONSUMER'S RIGHT TO CURE MUST ALLOW AT LEAST TWENTY DAYS TO CURE THE DEFAULT.

You have questioned the effectiveness of a notice of the right to cure sent to your client who had previously granted a security interest to a finance company in her home furnishings and then failed to make a payment as required by the agreement. The notice of the consumer's right to cure was sent March 11, 1977 providing that March 15, 1977 was the last date for payment, four days after the notice was sent. You asked first whether a four day period for cure is sufficient under Section 5.110 of the Consumer Protection Code.

Section 5.110 of the Consumer Protection Code, which is substantially the same as Section 5.110 of the 1974 Text of the Uniform Consumer Credit Code, states in part:

- (1) With respect to a consumer credit transaction, after a consumer has been in default for ten days for failure to make a required payment and has not voluntarily surrendered possession of goods that are collateral, a creditor may give the consumer the notice described in this section. A creditor gives notice to the consumer under this section when he delivers the notice to the consumer or mails the notice to him at his residence...
- (2) The notice shall... conspicuously state: the ... date by which payment must be made to cure the default.

Although Section 5.110 itself does not state a specific period of time which must elapse before the last date for payment, when read in conjunction with Section 5.111, a minimum period of twenty days is required to allow the consumer the opportunity to cure his default. Section 5.111

of the Consumer Protection Code is substantially the same as Section 5.111 of the 1974 Text of the Uniform Consumer Credit Code. Subsection (1) of that Section reads in pertinent part:

With respect to a consumer credit transaction ... after a default consisting only of the consumer's failure to make a required payment, a creditor, because of that default, may [not]... take possession of or otherwise enforce a security interest in goods that are collateral until twenty days after a notice of the consumer's right to cure (Section 5.110) is given. Until expiration of the minimum applicable period after the notice is given, the consumer may cure all defaults consisting of a failure to make the required payment....

A period shorter than twenty days would not be sufficient to allow the consumer to take the steps necessary to alleviate the situation as contemplated by the cure provisions. Official Comment 3 to 1974 UCCC Section 5.110 says, "a default... may be cured by the consumer if he makes that payment before the expiration of the minimum period prescribed after written notice of his default and that prior to this time the creditor may not proceed against goods that are collateral...." The phrases "minimum applicable period," "minimum period prescribed," and "this time" in the Code and Comment apparently all refer to a period of not less than twenty days.

Official Comment 3 goes on to explain that the cure provisions are intended to prevent creditors from repossessing collateral when a payment is only a few days late and to give "the average consumer the opportunity to rehabilitate his account, bring a billing error to the attention of or present a breach of warranty claim to the creditor, or negotiate a refinancing or deferral arrangement that may be required by a change in his financial circumstances." By reading Sections 5.110 and 5.111 together, it is apparent that the drafters intended that the minimum twenty day period prior to which a creditor may not proceed against the collateral is also the minimum period of time during which the consumer may cure the default. It is thus the opinion of this Department that a period shorter than twenty days in which the consumer may cure his default is insufficient.

Your second question concerns the effectiveness of a notice of the consumer's right to cure which gives the consumer less than twenty days to cure. In the case you presented,

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the consumer was led to believe he had only four days to cure and yet the creditor waited more than twenty days to proceed against the collateral. It is our opinion that a notice containing an insufficient amount of time cannot be the basis for enforcement of the creditor's security interest in goods that are collateral. The Consumer Protection Code clearly provides that a creditor may neither accelerate maturity of the unpaid balance nor enforce a security interest in goods that are collateral until twenty days after notice is given, and that prior to expiration of that period a consumer may cure the default. If the consumer were led to believe that he had less than twenty days to cure and acted according to that misrepresentation by not paying following the incorrectly stated "last day for payment," in essence he would have been deprived of his right to cure for the remainder of the statutory period. It is the opinion of this Department that a notice of the consumer's right to cure which gives the consumer less than twenty days to cure the default is insufficient to give the creditor the right under Section 5.111 to take possession of or otherwise enforce a security interest in goods that are collateral.

By: Kathleen Goodpasture Smith  
Kathleen Goodpasture Smith  
Staff Attorney

Irvin D. Parker  
Irvin D. Parker  
Administrator

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