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Declaratory Ruling No. 5.204-7507

BUYERS RIGHT TO CANCEL HOME SOLICITATION SALE
SECURED BY THE BUYERS RESIDENCE IS CONTROLLED
EXCLUSIVELY BY THE FEDERAL TRUTH IN LENDING ACT.

In a consumer credit sale transaction solicited at the buyer's residence and secured by an interest in the consumer's residence, what must a seller do to comply with the South Carolina Consumer Protection Code provisions respecting the buyer's right to cancel?

Part 5 of Article 2 of the Consumer Protection Code provides for the buyer's right to cancel home solicitation sales. Section 5.204 is a separate and less complete provision for buyer's right to cancel transactions secured by the buyer's residence. This Section was to be implemented by rules of the Administrator.

Section 5.204 was written to be "substantially similar" to the right of rescission provision of the Truth in Lending Act with the expectation that the State would apply for and receive an exemption from the federal law. Instead of seeking an exemption from the Truth in Lending Act, the South Carolina General Assembly simply provided that persons shall "in all respects comply with that Act." (Section 2.301).

Where a consumer credit transaction is secured by the consumer's residence a creditor must comply with the Federal Truth in Lending Act right of rescission provisions as implemented by Regulation Z, Section 226.9, whether or not such transaction is also a home solicitation sale.

It is the opinion of this office that the buyer's right to cancel a home solicitation sale secured by the buyer's residence is controlled exclusively by the Federal Truth in Lending Act and compliance with that Act as implemented in Regulation Z constitutes compliance with the South Carolina Consumer Protection Code.

Irvin D. Parker
Administrator