

September 10, 1975

Re: Notice of Right to Cure

Dear

You have inquired whether your bank is required to issue a Notice of Right to Cure in a case where the consumer's loan (which would have been a loan subject to the Code on January 1, 1975) was in default and a demand for the balance in full was made prior to January 1, 1975, yet the bank did not file suit on the loan until sometime after January 1, 1975. Where you have not indicated whether or not your action will seek to obtain possession of collateral secured by this loan, it is necessary to answer your question in two parts.

If your action seeks to retain possession of the collateral after January 1, 1975, you would be subject to subsection 2 of section 5.111 (Cure of Default) which prohibits a creditor from seeking possession of collateral due to default until twenty (20) days after a notice of the consumer's Right to Cure is given. Section 14 of Chapter 762 of the Public Laws of 1973 (Consumer Credit Code) requires creditors, under the terms of subsection 3 thereof, to comply with the provisions of the article on remedies and penalties insofar as the article limits the remedies of creditors in all credit transactions prior to January 1, 1975. Sections 5.109 through 5.112 dealing with Cure and Default may be found in Article 5, part 1 - the section of Article 5 referred to in Section 14 of the Public Law.

If, however, the default and the demand for the balance in full had been made prior to January 1 and the action initiated after January 1 did not seek possession of collateral, then it would appear that you would not be required to afford the consumer the Notice of Right to Cure where you are not seeking an additional remedy (repossession), after January 1, recognized and controlled by the Code.

The distinction made in these cases is based upon our interpretation that the demand of the balance in full is, in fact, a form of accelerated maturity recognized by Section 5.111. Thus, if a creditor should accelerate maturity prior to January 1 and his action to recover the balance is not initiated until after January 1, the consumer's Right to Cure will not come into play unless the creditor should also attempt to regain possession of collateral after January 1.

Respectfully,

John E. Quinn
Superintendent

JEQ/jh