

JOHN E. QUINN
SUPERINTENDENT



DEPARTMENT OF BUSINESS REGULATION
BUREAU OF CONSUMER PROTECTION
~~STATE HOUSE ANNEX~~ 51 Chapel Street
AUGUSTA, MAINE 04330
(207)289-3731

ADVISORY RULING #26

(Formerly Administrative
Interpretation #29)

December 9, 1975

Dear

Your correspondence outlines the following situation: a consumer credit transaction is entered into outside of this State for the purchase of an automobile with a consumer who is not a resident of Maine and the agreement permits the creditor to arrange peaceful repossession or accept voluntary repossession of the secured collateral upon default.

You have inquired whether these forms of repossession are permitted under the Consumer Credit Code where the consumer now resides in Maine. You have also inquired whether the Code permits repossession under these circumstances where the creditor has failed to comply with the requirements of § 5.110 (notice of cure) and § 5.111 (cure of default).

Assuming the transaction falls within the Code definition of a consumer loan or credit sale, the transaction is subject to the limitations on creditors remedies (§§ 5.101 - 5.116) under the terms of § 1.201(3). § 1.201(3) "applies to actions or other proceedings brought in this State to enforce rights arising from consumer credit sales, consumer leases, or consumer loans, or extortionate extensions of credit, wherever made."

The last sentence of § 5.110 of the Code, as originally enacted, provided that "failure to pay by the last date for payment will permit the creditor to take goods away from the consumer or to take other legal action." By thus referring to the repossession of collateral as a form of legal action, the drafters of the Code have impliedly expanded the phrase "actions or other proceedings" found in § 1.201(3) to include any form of lawful repossession. In addition, subsection 2 of § 5.111 states that "...after a default consisting only of the consumer's failure to make a required payment, a creditor, because of that default, may neither accelerate maturity of the unpaid balance of the obligation, nor take possession of or otherwise enforce a security interest in goods that are collateral until 20 days after a notice of the consumer's right to cure,..."

It would therefore appear that voluntary or peaceful repossession under the circumstances you have described may be accomplished only when the creditor or his agents carry out the repossession, as authorized by § 5.112, (creditors right to take possession after default), in full compliance with § 5.110 and § 5.111 relating to the nature and cure of default.

Respectfully,

John E. Quinn
Superintendent

JEQ/jh