

The State of South Carolina

Department of Consumer Affairs

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December 2, 1976

Administrative Interpretation No. 2.303-7615

THE NOTICE TO CO-SIGNER AND SIMILAR PARTIES MUST  
BE ON A SEPARATE PIECE OF PAPER.

Subsection (1) of Sections 2.303 (consumer credit sales) and 3.303 (consumer loans) entitled "Notice to Co-signer and Similar Parties" states:

A natural person, other than the spouse of the consumer [or debtor], is not obligated as a co-signer, co-maker, guarantor, indorser, surety, or similar party with respect to a consumer credit sale [or consumer loan], unless before or contemporaneously with signing any separate agreement of obligation or any writing setting forth the terms of the debtor's agreement, the person receives a separate written notice that contains a completed identification of the debt he may have to pay and reasonably informs him of his obligation with respect to it. (Emphasis added)

You have asked whether this notice to co-signers and similar parties must be physically separate from the writing evidencing the terms of agreement or can be combined with that writing. It is the opinion of this Department that the notice must be on a separate piece of paper rather than incorporated into the writing which evidences the terms of the agreement.

Because the purpose of this notice is to inform the co-signer or similar party of the consequences of his act, it is necessary to require a separate document which sets forth the obligation clearly without the danger of its being lost in or confused with the terms of the agreement itself. The language "separate written notice" leads to the conclusion that a separate document is required. An example of a notice which complies is set out in Subsection (2) of Sections 2.303 and 3.303 and states in part, "This notice is not the contract that obligates you to pay the debt. Read the contract for the exact terms of your obligation." If such a notice were contained in the written agreement, it would cause confusion due to the statement that the notice is not the "contract".

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This requirement can be analogized to the requirement of notice of the right to rescind certain transactions in the Truth In Lending Act and Regulation Z. Both the Truth In Lending Act's notice of the right to rescind and the Consumer Protection Code's notice to co-signers and similar parties must be separate from the written agreement to impress upon a person the importance of his undertaking which otherwise might not be apparent.

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