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ADMINISTRATOR
AND
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The State of South Carolina

Department of Consumer Affairs

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COLUMBIA, S.C. 29250-5757

December 2, 1985

Administrative Interpretation No. 5.110-8501

THE CURE NOTICE PROVIDED IN SECTION 37-5-110(2) MAY BE ALTERED TO DELETE REFERENCES TO PERSONAL RESPONSIBILITY FOR THE DEBT IN THOSE CASES IN WHICH THE CREDITOR MAY BE ENJOINED FROM COMMENCEMENT OF ACTION AGAINST THE DEBTOR BECAUSE OF A DISCHARGE OF THE DEBT IN BANKRUPTCY.

The Department has been asked whether the cure notice set forth in Exhibit 1 is sufficient for compliance with the South Carolina Consumer Protection Code in the following circumstances:

A consumer debtor is discharged in bankruptcy of personal liability. The debtor has retained possession of collateral throughout the pendency of the bankruptcy proceedings although he has made no payments on the account since pre-petitioned filing; the transaction is in default. The secured creditor wishes to enforce its lien by repossessing the collateral, but is concerned that specific reference of the amount of the debt could connote personal liability of the debtor, thereby triggering application of 11 U.S.C. § 524(a)(2).

The notice in the exhibit tracks the language of the notice in S. C. Code Ann. § 37-5-110 (1976 as amended) with two exceptions. It deletes the reference to personal liability which states "[t]hese rights include . . . the right, in many instances, to hold you personally responsible for any difference between the amount the property brings in a sale and the balance due us on the credit transaction in question." It also adds two sentences explaining the consumer's rights with regard to the collateral: "You have been discharged from personal liability on this obligation in recent bankruptcy proceedings and we cannot enforce payment if you fail to respond to this Notice. However, bankruptcy law authorizes us to repossess the collateral if you fail to make payment as set forth herein."

Section 37-5-110(2) requires only that the notice be in substantially the form of the notice in that subsection in order to comply. We are aware of no intention on the part of the General Assembly to require absolute adherence to the specific terminology of the cure notice even in cases where that terminology is not appropriate, and thereby make it impossible for the creditor to repossess the item because of a reference in the notice to a personal debt.

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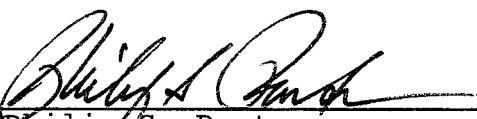
It is our opinion that the form set forth in the exhibit is sufficient to comply with the Consumer Protection Code under the circumstances described and if it is correctly filled out.

We express no opinion as to the sufficiency of any other form which deviates from the language set forth in Section 37-5-110. Our belief that this notice is sufficient is based upon the circumstances of its intended use, its conspicuousness, the absence of any misstatement of law or fact or any language which would tend to mislead the consumer with regard to his or her rights or obligations, as well as the clarity and accuracy of any language added to the Section 37-5-110 notice and its presentation in a manner which will not detract the consumer's attention from required language.

We likewise express no opinion as to the sufficiency or allowability of this notice under any provisions of the Federal Bankruptcy Code [11 U.S.C. §§ 101, et seq].

In summary, it is the opinion of this Department that a creditor may alter the cure notice under the circumstances described above without violating the Consumer Protection Code's cure notice provisions and without prejudicing its rights to proceed against the collateral as allowed by law.

Steven W. Hamm, Administrator

By: 
Philip S. Porter
Counsel to the Administrator

Attachment