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Department of Consumer Affairs

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October 27, 1986

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Administrative Interpretation No. 5.110-8602

AN UNSECURED CONSUMER CREDITOR MAY ALTER THE CURE NOTICE PROVIDED IN SECTION 37-5-110(2) BY DELETING REFERENCES TO THE CREDITOR'S ABILITY TO REPOSSESS THE COLLATERAL.

The Department has been asked whether an unsecured consumer creditor could delete references in the Section 37-5-110 cure notice which refer to the creditor's right to repossess collateral and to hold a debtor responsible for a deficiency. In our opinion the creditor may delete such language.

S. C. Code Ann. § 37-5-110(2) (1976 as amended) does not mandate a form to be used in all circumstances. It requires the creditor to state its name, address and telephone number, along with a brief identification of the transaction, the consumer's right to cure the default, the amount of the payment and the date by which it must be made.

The subsection also sets forth a notice which is deemed to be in compliance if correctly used by the creditor in substantially that form. The Department recognized in Administrative Interpretation No. 5.110-7703 (Reconsideration) that strict adherence to the specified form was not called for by Section 37-5-110(2): "[T]he suggested form of notice in that section is not required and may be modified to conform to the particular default situation prompting it, so long as the required elements of the notice set forth in that section are included."

In Administrative Interpretation No. 5.110-8501 the Department addressed the ability of the creditor to delete references to deficiencies.

While that interpretation dealt with cure notices in transactions involved in bankruptcy proceedings, it clearly recognized that the Code does not require the form of the notice set forth in Section 37-5-110(2) to be used in situations where use of the form's terminology would be inappropriate or confusing. The same principal applies to references to repossession. If the debt is unsecured and repossession is not a possibility, references to repossession in the cure notice are unnecessary and confusing.

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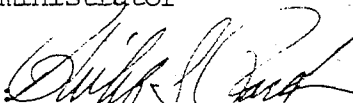
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The Department was not provided with a form and this interpretation expresses no opinion as to the sufficiency of any form in a particular situation. It is our opinion, however, that Section 37-5-110(2) does not require reference in cure notices to repossession rights where such references would be inappropriate.

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Administrator

By



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