

April 18, 1979

Dear

I am writing in response to your letter of February 23 1979, in which you requested an Advisory Ruling with respect to the applicability of Section 5-111 of The Maine Consumer Credit Code to transactions that have matured. Specifically, you inquired, "If a transaction has reached its maturity and the remaining balance goes in default, must we give a twenty day notice before legal action or repossession may be instituted." You cited two credit transactions as examples, the details of which are as follows:

1. Your bank has a twelve (12) month installment loan on which eleven (11) payments have been paid, but the twelfth payment goes in default.
2. Your bank has a six (6) months time note. Upon maturity, of the note, the consumer is in default as he has not paid it on schedule.

You stated that it is your understanding of Section 5-111 as it relates to the above instances that no notice of right to cure is necessary as you are not accelerating maturity because the transactions have already matured. You are correct on the point that no acceleration is taking place but have not taken into consideration all of the prohibitions set forth in Section 5-111, subsection 1, which reads in part:

"With respect to a consumer credit transaction, except as provided in subsection 2, after a default consisting only of the consumers' 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, as provided in section 5-110, is given..." (Emphasis added)

As you know, both single payment notes and installment notes are consumer credit transactions subject to the general provisions of the Code. Section 5-111 encompasses both single payment notes and installment notes. The language in Section 5-111 was carefully chosen by the drafters of the Code to provide consumers who did not make a required payment with a 20 day period to recognize their predicament and provide an opportunity to cure the default without impairing a continuing contractual relationship with the creditor. The rationale is equally applicable to situations where a consumer failed to make a required payment with respect to a debt payable in installments and to a debt consisting of a single payment in which the consumer failed to make the "required payment." Thus, the language in Section 5-111 was deliberately chosen to cover any situation where a consumer failed to make a "required payment."

With respect to secured installment or single payment notes, it is the position of this Bureau that a creditor may not take possession of or otherwise enforce a security interest in goods that are collateral until twenty (20) days after a notice of the consumer's right to cure is given regardless of whether or not the debt has matured.

With respect to secured installment or single payment notes that have not matured, in situations whereby the creditor chooses to accelerate the maturity instead of taking possession of or otherwise enforcing a security interest in goods that are collateral, a notice of right to cure must be issued.

With respect to unsecured installment or single payment notes, that have matured, it is not necessary to send a notice of right to cure, as there is no security to take possession of and the debt will not be accelerated as the maturity of the transaction has already been reached .

With respect to unsecured installment or single payment notes that have not matured, a notice of right to cure would have to be issued if it is the intention of the creditor to accelerate the maturity.

This letter will serve as an Advisory Ruling based upon the facts as presented to this office.

Respectfully,

/s/ Harry W. Giddinge

Harry W. Giddinge  
Deputy Superintendent

HWG/erb

AR #88 AMENDMENT

This Advisory Ruling is modified to the extent that the 20-day right to cure period described has been shortened to 14 days by P.L. 1985, c. 336, §11.

7/14/86