

January 27, 1975

Dear

You have inquired whether Section 5-111 (cure of Default) has been interpreted by this Bureau to mean that upon default in one payment, notice of cure and cure of that installment and the debtor defaults on the next installment payment, whether §5-111 requires that the creditor give the debtor another opportunity, *ad infinitum*. It is our position that §5-111, as drafted and as enacted, was intended to provide the debtor with one and only one such opportunity to cure unless the creditor should provide otherwise.¹

You have also asked whether or not a "Consumer Loan" would include any loan over 12 ¼% secured by real estate or whether "Consumer Loans" would include only those loans over 12 ¼% secured by land where the loan exceeds \$25,000. In response to your question, please consider Section 1-202, subsection 7, which excludes from the jurisdiction of the Code any loan made by a Supervised Financial Organization where the loan is secured by a first mortgage on real estate regardless of the rate of interest charged on the loan.

A "Consumer Loan" secured by an interest in land includes any such loan made at a rate greater than 12¼%, including loans greater than \$25,000, but, of course, excluding those loans which fall within the exclusion of Section 1-202, subsection 7.²

You have indicated that it does not appear that the Consumer Credit Code provides for the imposition of late charges of delinquency charges for simple interest loans. We are in agreement. In fact, the Code permits the imposition of delinquency charges only with respect to pre-computed loans.

Respectfully,

John E. Quinn
Superintendent

JEQ/dab

ADVISORY RULING #4

¹ See AR #88 Amendment to AR #3

² The reference to §1-202(7) in this Ruling should now be to §1-202(8). Further, the statement in this Ruling to the effect that any loan made by a supervised financial organization, secured by a first mortgage on real estate, is exempt from the Code, has been made inaccurate by legislative amendment. P.L. 1983, c. 720, §2 made two changes affecting the applicability of the Code to first lien mortgage loans made by supervised financial organizations (banks). First, for any first lien mortgage loan made by a bank that is a "supervised loan" (i.e., in excess of 12¼%, or a variable rate loan with the capacity to exceed 12 ¼% (see AR #45)), §2-310 applies even though the loan is otherwise Code-exempt. That section addresses the servicing of such loans when they are assigned.

JANUARY 27, 1985

PAGE 2

The second change addressed future advances made pursuant to a future advance clause in a first lien mortgage. The amendment made all such advances subject to the Code, except those advances made to protect the lender's security or which were caused by negative amortization (see AR #60-A).

07-14-86