

ADVISORY RULING #12  
MARCH 7, 1975

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(Formerly Administrative Interpretation #15)

Dear

I am in agreement with your interpretation of section 3.301 to the effect that the \$300 limitation provided therein was not intended to operate as a restriction upon sellers seeking to take a security interest in the goods sold in a consumer credit sale.

You have also inquired whether contract provisions which are permissible in some circumstances, but not in others, may be allowed in form contracts utilized for a range of agreements. Specifically, you have noted provisions relating to attorneys fees and deficiency judgments.

Deficiency judgements, under the terms of §5.103, are permitted under certain circumstances. You have suggested the possible use of a clause in a credit sale contract which would provide that deficiency judgements will be sought under those circumstances "allowable by law." This would appear to be an acceptable provision where the Code has not prohibited reference to deficiency judgments in credit sales agreements. However, the use of language referencing attorneys fees in either consumer credit sales or supervised loan agreements is expressly prohibited by §2.507. You have raised the case of a bank which might use the same form agreement in supervised loans as well as loans where the interest rate is 12 1/4 percent or less. The agreement would provide that attorneys fees would be sought where "allowable by law." This would not be an acceptable practice.

In any case where the bank is involved in a supervised loan, it should be careful to delete any reference to attorneys fee.

Respectfully,

John E. Quinn  
Superintendent

JEQ/jh