

ADVISORY RULING #20
AUGUST 19, 1975

(Formerly Administrative
Interpretation #24)

August 19, 1975

Attention:

Dear

The question arose in your recent discussion with a staff member of the Bureau concerning whether a consumer had the right to rescind a well drilling agreement merely because the well driller had extended credit to the consumer for work to the consumer's residence without, in fact, attempting to obtain a security interest or lien on the consumer's residence.

It was recently made clear, in an amendment to the federal Truth-in-Lending Act (TIL), incorporated into Maine's version of TIL (§7.117 of Title 9A), that consumers have the right to rescind an agreement until midnight of the 3rd business day following the consummation of the transaction or the delivery of the rescission disclosures required until TIL in any consumer credit transaction, with the exception of purchase money mortgages, in which a security interest, including any security interest arising by operation of law, is or will be retained or acquired on any real property which is used or is expected to be used as the residence of the consumer to whom credit is extended.

The term security interest, under TIL, includes materialmans, artisans and other similar liens. It should also be noted that the definition of credit under TIL includes an agreement whereby the consumer agrees to repay the well driller, for work performed, in more than four installments even though no finance charge is imposed.

Thus, in the case of a well driller who extends credit to a consumer under these circumstances, the transaction is rescindable even where the lien rights merely exist by operation of law even though the well driller has not sought to obtain a security interest. The transaction remains rescindable until either proper disclosures of the consumers right to rescind or documents effectively waiving the well driller's rights to obtain a security interest have been delivered to the consumer. In the event that a consumer chose to rescind the agreement, any security interest under that transaction would be void.

Respectfully,

John E. Quinn
Superintendent

JEQ/jh