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RICHARD L. CLELAND
ASSISTANT ATTORNEY GENERAL IN CHARGE
CONSUMER PROTECTION DIVISION

LINDA THOMAS LOWE
ASSISTANT ATTORNEY GENERAL

JAMES M. PETERS
ASSISTANT ATTORNEY GENERAL

DEAN A. LERNER
ASSISTANT ATTORNEY GENERAL

TERRENCE M. TOBIN
ASSISTANT ATTORNEY GENERAL

SUSAN BARNES BRAMMER
ASSISTANT ATTORNEY GENERAL

ADDRESS REPLY TO:
CONSUMER PROTECTION DIVISION
HOOVER BLDG., SECOND FLOOR
1300 EAST WALNUT
DES MOINES, IOWA 50319
515/281-5926

Department of Justice

THOMAS J. MILLER
ATTORNEY GENERAL

September 10, 1984

RE: Your Inquiry Concerning Iowa Consumer
Credit Code Default Provisions

Dear :

This is in response to your letter in which you posed the question of whether a showing of compliance by a creditor with the cure of default provisions of the Iowa Consumer Credit Code (ICCC) is a pre-requisite for entry of a default judgment.

As you note in your letter, the court must first determine whether the transaction in question is a consumer credit transaction as defined in § 537.1301(11) through § 537.1301(14) of the ICCC. Presumably the complaint or petition for a money judgment should show on its face whether or not the underlying debt is a consumer credit transaction. A basic guideline which could be used to make such initial determinations is for the court to study the complaint to establish that the defendant-debtor is an individual who entered into the transaction involving a debt of \$25,000 or less which was incurred for personal, family, or household purposes.

Once the court made such a determination, it would then examine the complaint to determine if the creditor had complied with § 537.5114 which requires that the creditor: "...shall allege the facts of the consumer's default, the amount to which the creditor is entitled, and an indication of how that amount was determined." [emphasis added] This section requires the creditor to go beyond notice pleading to avoid having the court enter a default judgment based on insufficient information. (See: CCH, Consumer Credit Guide, Vol. 1, 1974 U.C.C.C. § .5114 Comment.) Because the statute specifically requires notice to cure as a pre-requisite to enforcement of a claim, § 537.5110(1) (2), it is our view that one of the "facts of default" which must

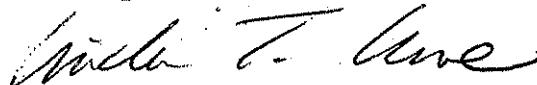
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be alleged is that Notice of Right to Cure Default and the statutory 20 day waiting period were provided to the consumer.

When § 537.5114 is read together with § 537.5110(7), it is our view that the court may not enter a judgment by default, or otherwise, unless the creditor has by a verified petition or sworn testimony shown that the creditor has complied with the cure-of-default provisions as set out in § 537.5110. Under § 537.5110(7) if a Notice of Right to Cure should have been sent and was not, "the court shall dismiss the action without prejudice."

Please understand that this letter is not an opinion of the Attorney General, but rather is advice by the Administrator of the ICCC under § 537.6104.

Sincerely,



LINDA THOMAS LOWE
Assistant Attorney General

cf

Enclosure: CCH, Consumer Credit Guide
Vol. 1, 1974 U.C.C.C. § 5114 Comment