

**OFFICE OF
CONSUMER CREDIT
COMMISSIONER**



**LESLIE L. PETTIJOHN
Commissioner**

**Writer's Direct Number
512/479-1291**

June 27, 1997
Interpretation Letter Request 97-1

Ms. Angela Chinn Woodbury,
McGinnis, Lochridge & Kilgore, L.L.P.
1300 Capitol Center
919 Congress
Austin, TX 78701

Dear Ms. Woodbury:

You have requested an interpretation of Title 79 pursuant to the provisions of TEX. REV. CIV. STAT. ANN. art. 5069-2.02A(10) (Vernon 1995). Your request details the following query:

May a buyer who exercises his or her right to refinance a payment which is more than twice as large as the average of all prior scheduled installments under a retail installment contract (a "balloon payment"); agree with the holder of the contract that installment payments on the refinanced balloon payment will be larger or more frequent than the average amount or frequency of the payments under the contract preceding the balloon payment?

Your question concerns provisions of chapter 7, the motor vehicle installment sales chapter. Article 5069-7.02(9) provides:

(9)(a) Except as provided in Subsection (b) of this Section, if any scheduled installment of a retail installment contract is more than twice as large as the average of all prior scheduled installments (except the down payment), the buyer has the right, at the buyer's option, to refinance, without being charged an acquisition cost, that payment at the time it is due. The buyer has the right to refinance that payment in installments which are neither larger nor more frequent than the average amount and frequency of payments preceding that payment, and the rate of time price differential applicable to such refinancing shall not exceed that originally agreed upon.

(b) Section (9)(a) of this Article does not apply to:

(i) a lease;

(ii) a retail installment transaction for a vehicle to be used primarily for purposes other than personal, family, or household use;

Ms. Angela Chinn Woodbury
June 27, 1997

Interpretation Letter Request 97-1
Page 2 of 2

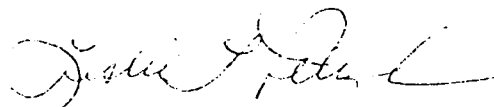
- (iii) a transaction for which the payment schedule is adjusted to the seasonal or irregular income or scheduled payments or obligations of the buyer; or
- (iv) a transaction of a kind determined by the Commissioner as not requiring the protection of the buyer provided in Section (9)(a) of this Article.

The statute specifically grants the buyer the "right" to refinance the balloon payment according to the same or better terms contracted for in the original retail installment contract. The statute, however, does not prohibit or preclude the buyer from agreeing to installments which are larger or more frequent than the original installments. To remain consistent with the statute, though, any agreement reached between the holder of a retail installment contract and a buyer for the refinancing of a balloon payment that requires a larger regular payment or more frequent payments must be to the advantage of the consumer. The review of whether the refinance of the retail installment transaction is to the "advantage" of the retail buyer is clearly subjective. Refinancing a balloon payment in a manner that is not to the consumer's advantage gives rise to the assertion that the buyer's rights under this statute were violated. In other words, if it appears that the retail buyer's agreement to larger payments or more frequent payments is contrived, the agreement will probably be found to be in violation of the statute.

It is also important to note that the 75th Legislature, in the enactment of House Bill 1595 has addressed the identical question. The Legislature very clearly deliberated the financing of balloon payments in House Bill 1595. That bill specifically provides that the term of a refinancing of a balloon payment should occur in not less than 24 months unless the buyer and holder otherwise agree. These provisions clearly contemplate the ability of the parties to contract freely within the confines of the law for an appropriate term for a refinancing.

In conclusion, the statute does not prohibit a retail buyer and a holder of a retail installment from refinancing a balloon payment that will be larger or more frequent than the average amount or frequency of the payments under the retail installment contract preceding the balloon payment. A review of any agreement to refinance the balloon payment of a retail installment transaction which requires larger payments or more frequent payments should reveal some benefit to the retail buyer or the agreement will be subject to reversal by a court of competent jurisdiction.

Sincerely,



Leslie L. Pettijohn

LLP:jjm

Approved by the Finance Commission on June 27, 1997.