



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

POST OFFICE BOX 2107
AUSTIN, TEXAS 78768

1011 SAN JACINTO BOULEVARD
512 / 475-2111

October 20, 1982 82-25

Ms. Karen M. Neeley
Ford, Reiff & Burgess
P. O. Box 2241
Austin, Texas 78768

Dear Ms. Neeley:

This is to acknowledge receipt of your letter dated September 16, 1982 concerning Article 5069-6A, Section 9, V.T.C.S. That provision states as follows:

"A creditor may agree to accept a subsequent consumer as an obligor under an existing obligation, and, if so, may charge and receive a transfer fee not in excess of one-half of one percent of the outstanding balance computed under Section 6 of this chapter or \$50, whichever is greater."

You ask whether in our opinion the above quoted provision authorizes the inclusion of a "due on sale clause" in a contract subject to the provisions of Chapter 6A.

As is apparent, the above quoted Section 9 of Chapter 6A (or any other provision of that chapter) does not specifically authorize the inclusion of a "due on sale clause" in a Chapter 6A contract. However, Section 9 is phrased in permissive terms and states that a creditor may agree to accept a subsequent consumer as an obligor on the contract. It seems that the Legislature intended that the creditor be able to exercise some degree of control over the transfer of the possession and ownership of a Chapter 6A obligation. Although there is no proviso made in Chapter 6A for a "due on sale clause" I am of the opinion that a Chapter 6A contract could contain a provision which would require the agreement of the creditor prior to any valid transfer of the obligation to a subsequent consumer. Failure to obtain the creditor's agreement and acceptance of the subsequent obligor could be contracted for by the parties to be an event of default on the part of the original debtor, and the default provisions of Section 10 of Chapter 6A would be applicable in the event the creditor exercised the right to declare the obligation in default. I believe the above mentioned Section 10 would be applicable rather than the provisions of the Uniform Commercial Code in the event of default.

Sincerely,

A handwritten signature in cursive script that reads "Sam Kelley".

Sam Kelley
Consumer Credit Commissioner