



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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February 29, 1984 84-4

Mr. P. Keith O'Gorman
Burns and O'Gorman
404 Regency Building
8961 Tesoro Drive
San Antonio, Texas 78217

Dear Mr. O'Gorman:

This is in response to your letter of February 9, 1984 concerning contracts subject to Article 5069-Chapter 6A, V.T.C.S. In order to accurately state your inquiry I will quote a portion of your letter as follows:

"As you are aware, Chapter 6A of the Texas Credit Code regulates the credit retail sale of manufactured housing. As a result of a change in the tax structure, it is now possible for tax liens to be attached to manufactured housing, in the event that the taxes are unpaid.

"I have recently experienced a number of problems involving manufactured housing which was placed on rental space in mobile home parks. This situation normally arises when the consumer fails to pay his retail installment contract and also defaults in payment of the rental on the park space. Frequently, both the landlord and the finance company allow the default to continue for several months before either takes action against the consumer. The consumer then abandons the house and leaves both the park owner and the finance company with significant debts. The park owner then attempts to assert some form of landlord lien against the mobile home to prevent its repossession by the finance company. While the law is very clear that the finance company has the right to possession of the house, the dispute causes the finance company a great amount of costs both in attorneys fees and in time in dealing with the park owner.

"As a result of these two occurrences, the question has arisen as to whether it is permissible for a finance company to include in a Chapter 6A contract a provision to the effect that the



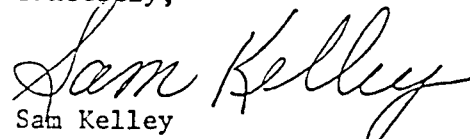
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finance company may advance money to pay 'all liens, encumbrances or rents' which have been incurred by the consumer, in regard to the manufactured house. The contract provision then would provide that in the event that the finance company does advance such sums for the benefit of the consumer, that the consumer agrees to repay the finance company the amounts actually advanced. There will be no interest charged on the amounts advanced, but rather would entitle the finance company to an actual recovery of dollars actually advanced."

There is no section of Chapter 6A which either prohibits or authorizes the inclusion in a Chapter 6A contract the type of provision about which you inquire. It would seem logical, however, that a creditor should be able to advance funds to pay liens, encumbrances or rents due on the collateral in a Chapter 6A contract in order to protect a valid lien on the collateral held by the creditor. Since any such advances would be made on behalf of and for the benefit of the debtor on the Chapter 6A obligation, there should be no reason why the debtor should not be responsible for any such sums if the contract so provided. Based upon the situation outlined in your letter (including the fact that no interest would be charged on such advances) it is our view that the parties to a Chapter 6A contract may agree that the creditor "may advance money to pay all liens, encumbrances or rents" past due but not paid with regard to the manufactured home, and that the debtor under the contract agrees to repay the finance company the amounts actually advanced.

Sincerely,


Sam Kelley
Consumer Credit Commissioner

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