



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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April 30, 1985 85-5

Mr. Dan L. Nicewander
Gardere and Wynne
Attorneys and Counselors
1700 RepublicBank Building
Dallas, Texas 75201

Dear Mr. Nicewander:

This is in response to your recent question concerning the appropriate rate ceiling applicable to the rescheduling of an Article 5069 - Chapter 6 contract which initially was subject to Article 5069 - 1.04(q) because it was the result of a home solicitation sale. A portion of your letter is set out below. (All statutory references are to various sections of Article 5069, V.T.C.S.) Your letter states, in part, as follows:

"...assume that a customer has entered into a retail installment transaction at his home so that the rate of interest is limited to the add-on rates set forth in Article 6.02(9) because the transaction is a home solicitation transaction subject to Article 1.04(q). Assume further that the customer defaults on the retail installment contract and later requests the holder of the retail installment contract to restate or reschedule the unpaid balance thereof pursuant to Article 6.02(12)(b). Article 6.02(12)(b) provides that a charge may be computed for the term of the amended contract at the applicable rate of charge as provided in Article 6.02. Assume further that the amendment to the retail installment contract is signed at the office of the holder of the retail installment contract and not at the home."

As you point out in your letter Article 6.02(15) provides that as an alternative to the rates in Article 6.02(9)(a) the rates authorized in Article 1.04 may be charged on a Chapter 6 contract. However, Article 1.04(q) provides that the Article 1.04 rates do not apply to "...agreements under which credit is extended for a home solicitation transaction..." Since the rescheduling and amendment of the described Chapter 6 contract would not be done at the home of the obligor, your question is whether upon such amendment the contract remains a home solicitation contract subject to Article 1.04(q) or whether the alternative Article 1.04 rates may be charged on the amended contract.



Mr. Dan Nicewander
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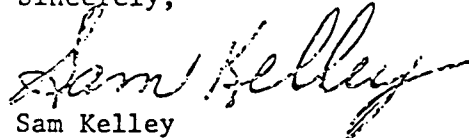
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Article 6.02 (12)(c) reads as follows:

"Any amendment to a retail installment contract must be confirmed in writing and signed by the buyer, and a copy of the writing shall be delivered to the buyer at the time of execution of same. Said writing together with the original contract and any previous amendments thereto shall constitute the retail installment contract."
(Emphasis added).

In view of the facts that Article 1.04(q) restricts the rate on home solicitation agreements, that Article 6.02(12)(c) requires that the original contract and the rescheduling amendment shall constitute the contract (agreement), and that the Article 1.04 rates could not be charged on the contract at its inception, it is the position of this office that the contract remains subject to Article 1.04(q) at the time of and subsequent to the amendment and the Article 1.04 rates may not be charged on such a contract.

Sincerely,



Sam Kelley
Consumer Credit Commissioner

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