

November 5, 1982

Revision of Advisory Ruling #48

Notice of Right to Cure for Insurance Premium Finance Company Agreements

Advisory ruling #48 attempted to clarify the meaning of Section 5-111 of The Maine Consumer Credit Code (Code) as it pertains to transactions subject to the Insurance Premium Finance Company Act (IPFCA).^{*} That Advisory Ruling contemplated that two notices would be sent to the insured by the finance company, a notice of right to cure default and, ten days later, a notice of intent to cancel. The Advisory Ruling also assumed that following these notices, the insurer would provide cancellation notices as required by the policy or law (i.e., The Insurance Code, Title 24-A M.R.S.A.).

The impact of the contractual appointment of the finance company as the insured's attorney-in-fact with the power to effect cancellation of the policy was previously not fully understood. This power means that instead of the insurance company sending any notices required by policy or law, the finance company does so in the name of the insured. Since the insured is canceling his own policy, the provisions of Title 24-A are not relevant.

The typical industry practice is to send a "notice of intent to cancel" which gives the insured ten days to cure the default or risk cancellation. However denominated, the notice must contain the requirements of Section 5-110(2) and (3) of the Code; the basic message that payment must be made to cure the default must be prominent. During this period the debt may not, of course, be accelerated.

This cure notice is usually followed by a cancellation notice which is immediately or shortly effective. The insurer is not obligated to send further notices because the insured has in effect cancelled his own policy; the insurer's only duty is to send the unearned premiums to the premium finance company within ten days of the effective date of cancellation pursuant to Section 5-111(4) of the Code.

It is clear that the first sentence of Section 5-111(1) intended to change the normal 20-day cure period for transactions subject to the IPFCA; otherwise, the reference to a ten-day period makes little sense. This shortened cure period also conforms to the ten-day notice prior to cancellation required by the Insurance Code (24-A, M.R.S.A., §2911 or §3050, for example) when the insurer seeks to cancel the policy for failure to pay a required premium.

In any case, premium finance companies must also comply with the Consumer Credit Code's rules concerning when the creditor is deemed to have "given" the notice of right to cure default. Section 5-110(5) provides that the creditor may mail (1) by Certified Mail, in which case the notice is given the date the consumer signs the receipt or the date of the post office's last attempt to deliver the notice; or (2) by ordinary mail, in which case the post office certificate of mailing is conclusive proof of receipt on the third day after mailing. The notice to cure must allow for this three-day mailing period in calculating the cure period. For example, a typical schedule would look like the following:

Payment Due.....first day
Cure Notice Sent.....tenth day
Cure Deadline.....23rd day
Cancellation Notice Sent.....23rd or thereafter

To the extent that Advisory Ruling #48 conflicts with this interpretation, it is hereby withdrawn and superseded.

/s/ Barbara R. Alexander
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Superintendent

*AR #88 Amendment

The Insurance Premium Finance Company Act, 9 M.R.S.A., c. 381, was repealed by P.L. 1985, c. 763, §14. The same public law amended the Code to provide special coverage to "insurance premium loans." The substance of this Ruling remains unchanged.

7/14/86