



State of Wisconsin \ OFFICE OF COMMISSIONER OF BANKING

September 22, 1982

T.E. PEDERSON
COMMISSIONER

WILLIAM G. NOBLE
ADMINISTRATOR

DIVISION OF CONSUMER CREDIT
P.O. BOX 7876
MADISON, WISCONSIN 53707

[REDACTED]

RE: Real Estate Security Agreement in Open End Credit Plan;
Sec. 422.417, Wis. Stats.

Dear [REDACTED]

I have received your letter of September 15, 1982, which discusses the retention of a security interest by a creditor in real estate in connection with an open end credit plan covered by the Wisconsin Consumer Act. According to Sec. 422.417 (3)(b), Wis. Stats., a creditor in a consumer loan may not take a security interest in real property if the obligation secured is less than \$1,000.

In applying this section of the act to extensions of open end credit, this office has always taken the position that the customer's obligation is the amount owed by the customer to the creditor. As a result, in an open end credit plan the customer's obligation could be greater than or less than \$1,000 at any particular time.

The determination as to whether the customer's obligation is \$1,000 or more should be made at the time the creditor seeks to enforce the security agreement since that is the crucial juncture with respect to this issue. Consequently, for purposes of determining whether the customer's obligation is secured by an interest in real estate, the creditor must look at the customer's balance at the time an action to enforce the security interest is commenced. The obligation may, of course, include accrued finance charges and other charges permitted by the Act. However, they must be charges which are due at the time the action is commenced as distinguished from charges which may become due in connection with enforcement of the customer's obligation.

For contractual purposes, the agreement may simply provide that whenever the customer's obligation to the bank is \$1,000 or more, that obligation is secured by the security interest in real estate provided by the customer in connection with the open end credit plan under consideration.

Very truly yours,

Robert A. Patrick
Attorney

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