

# STATE OF COLORADO

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December 8, 1989

### ADMINISTRATIVE INTERPRETATION NO. 2.301 AND 2.311-8901

IN ORDER TO COMPLY WITH THE CONSUMER LEASING DISCLOSURE REQUIREMENTS OF THE COLORADO UCCC, LESSORS MUST DISCLOSE ALL INFORMATION REQUIRED BY THE CONSUMER LEASING CHAPTER OF THE TRUTH-IN-LENDING LAW. DISCLOSURES PURSUANT TO COLORADO UCCC § 5-2-311 ALONE ARE NOT ADEQUATE.

Recent inquiries ask whether lessors should follow the consumer leasing disclosure requirements contained in the Federal Consumer Credit Protection Act, 15 U.S.C. § 1667 (1982), popularly known as the Truth-in-Lending Act, and referred to in § 5-2-301(4), C.R.S. (1989 Supp.), or the Colorado UCCC disclosure requirements found at § 5-2-311, C.R.S. (1973). My opinion is that the Colorado UCCC requires lessors to follow all of the consumer leasing disclosure requirements mandated by Truth-in-Lending. This document is an official interpretation by the Administrator of the Colorado UCCC pursuant to § 5-6-104(4), C.R.S. (1989 Supp.).

The Colorado UCCC applies to consumer leases of goods, services, and insurance incidental thereto, made primarily for personal, family, or household purposes if the lease amount is \$25,000 or less and the lease term exceeds 4 months. Section 5-2-106, C.R.S. (1989 Supp.). The Colorado UCCC, § 5-2-301(4) states that in a consumer lease transaction:

(4) [t]he lessor shall disclose to the lessee to whom credit is extended with respect to a consumer lease the information required by the "Federal Consumer Credit Protection Act."1/

The leasing provisions of that act and its enabling regulation, Regulation M, 12 C.F.R. § 213 (1981) together require 15 separate disclosures. They are:

(1) a brief description of the leased property that sufficiently identifies the property to the lessor and lessee;

(2) the total amount of any payment, such as a refundable security deposit paid by cash, check or similar means, advance payment, capitalized cost reduction or any trade-in allowance, appropriately identified, to be paid by the lessee at consummation of the lease;

(3) the number, amount and due dates or periods of payments scheduled under the lease and the total amount of the periodic payments;

(4) the total amount paid or payable by the lessee during the lease term for official fees, registration, certificate of title, license fees or taxes;

(5) the individually itemized total amount and description of all other charges payable by the lessee to the lessor which are not included in the periodic payments, including the amount of or method of determining, any liability the lease imposes on the lessee at the end of the term, but excluding the potential difference between the estimated and realized values required to be disclosed;

(6) a brief identification of insurance in connection with the lease that includes the types, amounts, and cost of coverage, and whether the insurance is provided or paid for by the lessor, or required of the lessee;

(7) a statement identifying any express warranties or guarantees available to the lessee with respect to the leased property;

(8) an identification of the party responsible for maintenance or servicing the leased property, together with a brief description of the responsibility, and a statement of reasonable standards for wear

and tear, if the lessor sets the standards;

(9) a description of any security interest, other than a security deposit previously disclosed, held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates;

(10) the amount or method of determining the amount of any delinquency, default or late payment charge;

(11) a statement of whether or not the lessee has the option to purchase the leased property and if at the end of the lease term, at what price, or if prior to the end of the lease term, at what time, and the price or method of determining the price;

(12) a statement of the conditions under which the lessor or lessee may terminate the lease before the end of the lease term and the amount or method of determining the amount of any penalty or other charge for early termination;

(13) a statement that the lessee shall be liable for the difference between the estimated value of the property and its realized value at early termination or the end of the lease term, if any liability exists;

(14) if the lessee's liability is based on the estimated value of the leased property, a statement that the lessee may obtain at the end of the lease term or at early termination, at the lessee's expense, a professional appraisal of the value which could be realized at sale by an independent third party agreed to by the lessor and lessee, which appraisal is binding on the parties and final; and

(15) if the lessee's liability at the end of the lease term is based on the estimated value of the property, (i) the value of the property at consummation, the itemized total lease obligation at the end of the term and the difference between them, (ii) that there is a rebuttable presumption that the estimated value at the end of the term is unreasonable and not in good faith to the extent that it exceeds the realized value by more than three times the average payment for a monthly period, and that the lessor cannot collect the excess amount of liability unless it brings a successful court action and pays the lessee's attorney's fees, although this requirement does not apply in the case of unreasonable wear and tear or excessive use, and (iii) a statement that the right of a willing lessee to make any mutually agreeable final adjustment regarding the excess is not precluded.

Despite the clear language of Colorado UCCC § 5-2-301(4), another Colorado UCCC section requires a lessor to make only 8 consumer disclosures and fails to include some of the federal disclosures. See § 5-2-311, C.R.S. (1973). It is my opinion that § 5-2-311, C.R.S. (1973) was effectively repealed by the 1985 amendment of § 5-2-301, C.R.S. (1989 Supp.) as detailed below.

In 1985, the General Assembly made several general changes to the Colorado UCCC. The amendment to § 5-2-301(4) eliminated a prior version of the law mandating leasing disclosures pursuant to part 3 of title 5, article 2. It substituted the federal leasing disclosures as the only acceptable disclosures under the Colorado UCCC. Committee testimony on the amendment indicates that the eight minimal Colorado disclosure requirements were to be effectively eliminated.

[The] suggestion was to update the disclosure requirements in the Code. The new section of that would be placed in the bill, would not require the delivery of the UCCC disclosures and would instead pick up the federal disclosures under Reg. M. Those disclosures have been promulgated in

the last several years, they've been continually updated -- we really haven't done much with the Code's disclosures and I would suggest that particularly in disclosure matters the need for nationwide uniformity probably is more important than any particular Colorado disclosures -- and as a practical matter all of the Colorado disclosures are contained in federal law anyway. So I think its a ... suggestion and I urge the committee to do it, would simply be to pick up the federal disclosures.

Testimony of Martin Stuber, UCCC Administrator on House Bill 1245 before the Senate Business Affairs and Labor Committee, March 26, 1985, Senate Committee Room 320A, 9:42-9:53 a.m.

While House Bill 1245 amended Colorado UCCC § 5-2-301(4) by eliminating the minimal Colorado disclosure required under Title 5, Article 2, Part 3, and substituted the disclosure information required by the Truth-in-Lending Act, it failed to expressly delete Colorado UCCC § 5-2-311 which contained the 8 Colorado disclosures. The two UCCC provisions are directly in conflict with each other requiring reliance on the rules of statutory construction.

Repeal of a statute by implication is not favored. In instances like the present, however, it cannot be avoided. When two statutes conflict, the statute most recently enacted is deemed controlling. Burton v. City and County of Denver, 99 Colo. 207, 61 P.2d 856, 107 A.L.R. 564 (1936).

The legislative intent as to repeal by implication is determined in accordance with accepted rules of construction of statutes, applied to the section claimed to be repealed and the alleged repealing act. Among the matters which have been regarded as properly considered, are the nature of the several acts involved, the history of such acts, the state of the law when they were passed, the history of the times or the facts and circumstances surrounding their enactment, as well as the language and respective titles thereof, the consequences of one construction or the other,

and the objects and purposes sought to be attained.

Casados v. People, 119 Colo. 444, 204 P.2d 557 (1949). Compare People v. District Court for the Second Judicial District, 196 Colo. 249, 585 P.2d 913, (1978) (Court will adopt construction to give effect to both statutes if there is not an irreconcilable conflict.)

The intent of the General Assembly is clear. Colorado UCCC disclosure requirements changed from those required by "this Part 3" to those mandated in the Truth-in-Lending Act. The General Assembly did not allow lessors the possibility of dual compliance as it did elsewhere in the Colorado UCCC. The failure to simultaneously repeal the 8 minimal disclosures of § 5-2-311, C.R.S. (1973) was apparently an oversight which should be corrected in the next general revision of the Colorado UCCC.2/

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1/ The definition of "Federal Consumer Credit Protection Act" includes all regulations issued pursuant thereto. See § 5-1-302, C.R.S. (1989 Supp.).

2/ The substance of this administrative interpretation was first issued as an unofficial opinion letter dated November 14, 1989.

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