



KEN SALAZAR  
Attorney General

BARBARA MCDONNELL  
Chief Deputy Attorney General

MICHAEL E. MCLACHLAN  
Solicitor General

STATE OF COLORADO  
DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING  
1525 Sherman Street - 5th Floor  
Denver, Colorado 80203  
Phone (303) 866-4500  
FAX (303) 866-5691

December 15, 1999

UCCC MATERIAL  
FOR YOUR INFORMATION

RE: Remedies for Improper Repossessions

Dear Mr.:

You asked Laura E. Udis, Administrator, Uniform Consumer Credit Code, what remedies were available to a debtor for an alleged improper repossession of consumer goods securing the debtor's consumer credit transaction. Ms. Udis has referred your inquiry to me for response. Please be advised this letter is not, nor may be construed as, an official interpretation or response of the Administrator pursuant to § 5-6-104(4), C.R.S. 1999.

Section § 5-1-103 of the Uniform Consumer Credit Code, §§ 5-1-101, et seq., C.R.S. 1999 (UCCC), provides that the UCCC is supplemented by other laws. In particular, the UCCC incorporates the Uniform Commercial Code, §§ 4-1-101, et seq., C.R.S. 1999 (UCC).

The UCC, in turn, contains an entire article (Article 9) devoted to the regulation of secured transactions. Part 5 of Article 9 governs default, and sets forth the creditor's and debtor's rights and remedies with respect thereto.

UCC § 4-9-507 provides debtors certain remedies in the event the creditor violates the UCC's procedures governing default. Among other things, § 4-9-507(1) provides that, where the collateral is consumer goods, the debtor has a right to recover "an amount not less than the credit service charge plus ten percent of the principal amount of the debt". This recovery is in addition to any other loss the debtor may suffer by reason of the creditor's violation.

Thus, this office believes the remedies available to debtors under the UCC also apply to secured consumer credit transactions under the UCCC.

Further, the UCCC imposes upon creditors additional obligations before enforcing certain security interests. Specifically, UCCC §§ 5-5-111 and 5-5-112 require the creditor under certain circumstances to give the debtor a notice of right to cure before repossessing goods or mobile homes. Any defect in or other failure properly to give such a notice would render any repossession based thereon improper and trigger the remedies available under UCC § 4-9-507. At least one Colorado court has so held. See D.E.B. Adjustment Co. v. Cawthorne, 623 P.2d 82 (Colo. App. 1981).

Finally, I note that UCCC § 5-5-108, regarding unconscionable debt collection, also may apply to the situation you describe.

I hope this answers your inquiry. If you have any additional questions, please do not hesitate to call.

Sincerely yours,

FOR THE ATTORNEY GENERAL



PAUL CHESSIN  
Assistant Attorney General  
Uniform Consumer Credit Code  
(303) 866-4494  
(303) 866-5691 (FAX)