# CHAPTER 1 CONSUMER RETAIL CREDIT

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## 100 GENERAL PROVISIONS

100.1 The provisions of this chapter were adopted by the District of Columbia Council as the "District of Columbia Consumer Retail Credit Regulations," Regulation No. 71-18, approved June 11, 1971, under the Council's powers to make police regulations for the protection of lives, limbs, health, comfort and quiet of all persons and the protection of all property within the District of Columbia.

100.2 The District of Columbia Council has determined that an effective program for the protection of consumers in connection with retail installment credit transactions is necessary for the protection of the health, comfort and quiet of all persons, and the protection of all property within the District of Columbia.

AUTHORITY: Unless otherwise noted, the authority for this chapter is §2 of a Joint Resolution to regulate licenses to proprietors of theatres in the city of Washington, District of Columbia, and for other purposes, approved February 26, 1892, 27 *Stat.* 394, D.C. Code §1-319 (1992 Repl. Vol.).

SOURCE: Preamble of the District of Columbia Consumer Retail Credit Regulation, Regulation No. 71-18, approved June 11, 1971.

EDITOR'S NOTE: Under Regulation No. 71-18, general administration and enforcement was vested in the Commissioner. Those functions were transferred to the Mayor under §422 of the District Charter. The Mayor's functions under the Regulation were reassigned to the Office of Consumer Protection by §4(b)(1) of the District of Columbia Consumer Protection Procedures Act, D.C. Law 1-76 (D.C. Code §28-3903(b)(1) (1981)). Under §2(d) of

the District of Columbia Consumer Protection Procedures Act Amendment Act of 1990, D. C. Law 8-234, the word "Department" replaced the word "Office." The intent of the replacement was to transfer the functions under the Retail Credit Regulation from the Office of Consumer Protection to the Department of Consumer and Regulatory Affairs. In conformance with D.C. Law 8-234, the word "Department" appears throughout this chapter.

## 101 TRUTH IN LENDING: FEDERAL LAW AND REGULATIONS

101.1 Except as otherwise specifically provided in this chapter, the following sections of the federal "Truth in Lending Act" (Public Law 90-321, 82 *Stat.* 146), as amended, are incorporated in this chapter by reference:

(a) Section 106 - Determination of finance charge;

(b) Section 107 - Determination of annual percentage rate;

(c) Section 121 - General requirements of disclosure;

(d) Section 122 - Form of disclosure;

(e) Section 124 - Effect of subsequent occurrence;

(f) Section 127 - Open end consumer credit plans;

(g) Section 128 - Sales not under open end credit plans;

(h) Section 141 - Catalogs and multiple page advertisements;

(i) Section 142 - Advertising of down payments and installments;

(j) Section 143 - Advertising of open end credit plans;

(k) Section 144 - Advertising of credit other than open end plans; and

(l) Section 145 - Non-liability of media.

101.2 Failure of any person covered by this chapter to comply with the sections of the "Truth in Lending Act" incorporated by reference in this section, as implemented by regulations issued by the Board of Governors of the Federal Reserve System, shall constitute a violation of this chapter.

101.3 Except to the extent provided in this chapter, compliance with the incorporated sections of the "Truth in Lending Act" shall constitute compliance with this section.

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §3.101.

## 102 REGISTRATION OF RETAIL SELLERS AND FINANCE COMPANIES

102.1 Any person who is a retail seller or a sales finance company shall register with the Department of Consumer and Regulatory Affairs (Department) as provided in this section.

102.2 Any person not registered, whose registration has been denied or suspended, or who has been deregistered as provided in this section shall not engage in business as a "retail seller" or as a "sales finance company."

102.3 Each person required to be registered shall furnish to the Department the registration information required on a form prescribed by the Department. The form shall require that the registrant provide the following information:

(a) Name of the person (registrant);

(b) Name under which business is transacted, if different from subparagraph (a);

(c) The names and addresses of the principal officers, if a corporation; if a partnership, the name and address of each partner;

(d) The address of the principal office, whether or not it is located inside the District;

(e) The addresses of all offices or retail stores, if any, in the District at which retail installment transactions are made, or in the case of a person taking assignments of obligations, the offices or places of business within the District at which that business is transacted;

(f) The names and home addresses of the persons who hold or own twenty-five percent (25%) or more of the interest in the person, firm, or organization engaged in retail installment transactions;

(g) The identity of all parent and subsidiary companies and companies under common ownership with the registrant which engage in retail installment transactions or sales financing in the District;

(h) If retail installment transactions are made otherwise than at an office or retail store in the District, a brief description of the manner in which they are made; and

(i) The name and address of the attorney-in-fact or general agent upon whom service of process may be made in the District.

102.4 At the same time that the information is furnished under §102.3, each person required to be registered shall submit to the Department a copy of the retail installment contract forms used by the registrant at the time of submission in connection with transactions covered by this chapter.

102.5 Each registration form shall be signed by the registrant or a principal officer of a registrant organization.

102.6 If any information submitted pursuant to this section becomes inaccurate, the registrant shall furnish the accurate information to the Department within twenty (20) calendar days thereafter, except as otherwise provided in §103.

102.7 No person whose registration has been suspended pursuant to the provisions of this chapter shall be re-registered other than in accordance with the terms of the order of suspension.

102.8 No corporation or partnership shall be registered if a deregistration order is then outstanding against any individual who is an officer of the corporation, a partner in the partnership, or any individual who holds or owns twenty-five percent (25%) or more interest in the registrant.

102.9 After a registration form has been submitted, the Department shall return a duplicate copy to the registrant which shall be validated by the Department to evidence the registrant's registration.

102.10 The validated form shall contain a registration number furnished by the Department.

102.11 The registration or a photocopy of the registration shall be posted and visible in a conspicuous place in each place of business in the District maintained by the registrant.

102.12 If a registrant transacts business through door-to-door solicitation, the registrant shall provide, upon request, a copy of the validated registration form at the time a solicitation is made.

102.13 Each registrant shall re-register every two (2) years beginning on the date stated in the validated copy of the registration form returned to the registrant by the Department under §102.9.

102.14 Re-registration shall comply with the requirements of §§102.3 through 102.6, except that the information and materials required to be furnished shall be submitted to the Department no later than sixty (60) days before the expiration date of the registration.

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §§2.101 through 2.105.

## 103 APPOINTMENT OF ATTORNEY-IN-FACT OR GENERAL AGENT

103.1 Each person covered under this chapter who is a nonresident of the District shall appoint or employ and maintain in the District an attorney-in-fact or general agent upon whom all judicial and other process or legal notice directed to the nonresident may be served relative to conduct subject to this chapter or other laws relating to retail installment transactions.

103.2 The attorney-in-fact or general agent appointed or employed under this section must be a resident of the District.

103.3 The nonresident registrant shall notify the Department of the appointment or employment and the name and address of the appointee or employee.

103.4 Within five (5) business days after any change in the appointment or employment of the attorney-in-fact or general agent, the nonresident registrant shall notify the

Department of the identity and the address of the substituted appointee or employee.

103.5 If a person fails to appoint or maintain a registered agent in the District, or whenever the registered agent cannot with reasonable diligence be found at the registered office of that person in the District, or whenever the registration of that person shall be revoked, the Department shall be an agent upon whom any process or other legal notice may be served and upon whom any notice or demand required or permitted by law to be served upon such person may be served.

103.6 Service on the Department of any process, notice, or demand shall be made by delivering to and leaving with the Director of the Department or the Director's designated agent duplicate copies of the process, notice, or demand.

103.7 If the Department is served under §103.5, the Department shall cause one copy of the process, notice, or demand to be forwarded by registered or certified mail to the last known address of the registrant.

103.8 The Department shall keep a record of all processes, notices, and demands served upon it under this section, and shall record the time of the service and the action taken by the Department under §103.7.

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §2.106.

## 104 EXAMINATIONS AND INVESTIGATIONS

104.1 For the purpose of discovering violations of this chapter, the Department may at any time investigate the transactions, business, and records of any person subject to this chapter relating to matters covered by this chapter.

104.2 If any records subject to this section are located outside the District, the registrant shall at his or her option, either make them available to the Department at a convenient location within the District, or pay the reasonable and necessary expenses for the Director of the Department or his or her representative to examine them at the place where they are maintained.

104.3 The Director of the Department may designate representatives, including comparable officials of the State in which the records are located, to inspect them on his or her behalf.

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §2.107.

## 105 RETAIL INSTALLMENT CONTRACTS: ADDITIONAL DISCLOSURES

105.1 In addition to the disclosures required pursuant to §101, the additional disclosures set forth in this section are required to be set out in a retail installment contract, separately and below any disclosures required under §101, if not made in connection with §101.

105.2 To the extent that the disclosure of "cash price" includes the cash price of delivery, installation, servicing, repairs, alterations or improvements, the charge made for such items shall be stated. For the purposes of this chapter, the amount by which the cash price stated in a retail installment contract exceeds the cash price of goods or services offered by the seller to other buyers in the ordinary course of business shall be deemed a finance charge.

105.3 Each retail installment contract shall include the name, address, and telephone number, if any, of both the seller and the buyer.

105.4 Each retail installment contract shall contain a description of the goods or services purchased, including, where applicable, the trade name, and the model number of the goods.

105.5 If the goods are used, seconds, or damaged, the contract shall so state.

105.6 If the seller takes collateral to secure the buyer's obligations under the agreement, a description of the collateral shall be set forth in the contract.

105.7 The seller shall disclose whether a financial benefit could inure to the seller by way of commission, rebate, or otherwise resulting from the buyer's obtaining any insurance coverage offered or arranged for by the seller if the seller, in connection with a retail installment contract, offers or arranges for any of the following:

(a) Credit life, accident, or health insurance;

(b) Insurance against loss of or damage to property;

(c) Insurance against liability arising out of ownership or use of property; or

(d) Insurance protecting the seller against the buyer's default or other credit loss.

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §3.103(A).

## 106 RETAIL INSTALLMENT CONTRACTS: FORM AND CONTENT

106.1 Except in series of sales transactions, each retail installment contract shall be contained in a single document, each page of which shall be signed by both the buyer and the seller.

106.2 At the top of the first page of the agreement, there shall be stated in at least twelve-point extra bold type the words **"RETAIL INSTALLMENT CONTRACT."**

106.3 If the printed terms of each contract are contained on both sides of a page, there shall appear on the first page the following words in boldface type: **"NOTICE: SEE OTHER SIDE FOR IMPORTANT INFORMATION."**

106.4 If the terms of a retail installment contract are contained on more than two (2) sides of each preceding page, the following words shall appear on each page in

boldface type: **"THE TERMS OF THIS CONTRACT ARE CONTAINED ON MORE THAN ONE PAGE."**

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §3-102(B).

## 107 RETAIL INSTALLMENT CONTRACTS: DELIVERY OF COPY OF CONTRACT

107.1 Except as provided in §107.2, the seller shall deliver to the buyer, or mail to the buyer at his or her address shown on the retail installment contract, a legible, executed, and completed copy of the contract prior to the delivery of the consumer goods or services or prior to the consummation of the transaction, whichever occurs first.

107.2 If the transaction is one of a series of sales, the other disclosures for the particular sale required by §§105, 106, and this section may be made at any time not later than the date the first payment for that sale is due if the seller furnishes the buyer a memorandum of the sale at the time the sale is consummated or the goods are delivered, whichever occurs first, that clearly sets forth the following:

(a) The cash price of the goods or services sold;

(b) A statement that the goods are used, seconds, or damaged, if applicable; and

(c) The insurance disclosure required by §105.7.

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §3.102(C).

## 108 ADDITIONAL DISCLOSURES WITH RESPECT TO OPEN END CREDIT

108.1 If the seller, in connection with an open end credit account offers or arranges for credit life, accident, or health insurance; insurance against loss of or damage to property or against liability arising out of ownership or use of property; or insurance protecting the seller against the buyer's default or other credit loss, the seller shall disclose whether a financial interest could inure to the seller by way of commission, rebate, or otherwise resulting from the buyer's obtaining the insurance coverage offered or arranged for the seller.

108.2 The disclosure required by §108.1 shall be made before the first transaction on an open end credit account in a single written statement which the customer may retain.

108.3 If any goods sold pursuant to an open end credit account are used, seconds, or damaged, the seller shall disclose that fact in writing to the buyer at the time of the sale. The disclosure may be made on a sales receipt issued in connection with the sale.

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §3.103.

## 109 PROHIBITION AGAINST SIGNING BLANK OR INCOMPLETED CONTRACT FORM

109.1 No person covered by this chapter shall cause or permit any contract or other document relating to a retail installment transaction to be signed by the buyer before all blank spaces (other than signature spaces) are filled in with easily legible writing and such seller has submitted to the buyer the completed contract or other document and given the buyer a reasonable opportunity to examine it.

109.2 Each contract shall contain a notice, satisfactory to the Department stating in substance that the buyer shall not sign the contract in blank and that the buyer is entitled to a readable copy of the contract at the time he or she signs it. The notice required by this subsection shall be printed in bold type not smaller than ten point (10 pt.).

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §3.104.

## 110 ACKNOWLEDGMENT OF DELIVERY OF CONTRACT

110.1 Any acknowledgment by the buyer of delivery of a copy of the contract shall be a rebuttable presumption of that delivery.

110.2 Acknowledgments may contain statements to the effect that "buyer acknowledges that before buyer signed the contract, seller submitted the contract to buyer with all blank spaces filled in; that buyer had a reasonable opportunity to examine it; and that thereafter a legible, executed, and completed copy was delivered to the buyer."

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §3.105.

## 111 REQUIREMENT FOR PROPERTY INSURANCE PROHIBITED

111.1 Unless otherwise required by law, no seller, as a condition to the extension of credit, shall require a buyer to obtain insurance against loss of or damage to property which is the subject of a sale, or against liability arising out of the ownership or use of the property.

111.2 The provisions of §111.1 do not apply to transactions where the sales price of the property is one thousand dollars ($1,000) or more.

111.3 If the sales price of property sold is one thousand dollars ($1,000) or more, the amount of loss or damage insurance a seller may require a buyer to obtain, as a condition to the extension of credit to the buyer, shall not exceed the sales price of the property insured.

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §3.106.

## 112 VALIDITY OF COMPLETION CERTIFICATE

112.1 In any transaction involving the modernization, rehabilitation, repair, alteration, improvement, or construction of real property, a writing signed by the buyer that the work has been satisfactorily completed shall not be valid or of any effect unless the work to be performed by the seller has been actually completed prior to the time of signing.

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §3.107.

## 113 WAIVER OF REGULATIONS PROHIBITED

113.1 Except as provided in §§119.2 through 119.4, no provision shall be inserted in any retail installment contract, contract extension, or refinancing agreement designed to nullify and make ineffective the provisions of this chapter, or otherwise deprive a retail buyer of the protection afforded by this chapter.

113.2 No provision shall be inserted in any contract or agreement by which the buyer waives or purports to waive any provision of this chapter.

113.3 The insertion in any contract or agreement of a provision designed or intended to nullify this chapter, or to waive the requirements of this chapter, shall constitute a violation of this chapter, and, in addition, that provision shall be void and of no effect.

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §3.108.

## 114 THIRD PARTY TRANSACTIONS

114.1 Any promissory note taken in connection with a retail installment contract subject to this chapter shall state on its face: **"THIS INSTRUMENT IS SUBJECT TO A RETAIL INSTALLMENT CONTRACT."**

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §3.109.

## 115 PROHIBITED CONTRACT FORM PROVISIONS

115.1 No person subject to this chapter shall use any contract form or any other instrument arising in connection with a retail installment transaction which contains any of the following:

(a) Any schedule of payments under which any one installment, except the downpayment, is not equal or substantially equal to all other installments, excluding the downpayment, or under which the intervals between any consecutive installments differ substantially, except as follows:

(1) The intervals for the first installment payment may be longer or shorter than the other intervals;

(2) The final installment payment may be less in amount than the preceding installment payment; and

(3) If a buyer's livelihood is dependent upon seasonal or intermittent income, the seller and the buyer may agree that one or more installment payments in the schedule of payments may be reduced or deferred;

(b) Any provision for the acceleration of the time when any part or all of the indebtedness becomes payable other than for a substantial default in payment or performance by the buyer, or on the same grounds that would authorize an attachment before judgment under D.C. Code §§16-501(d)(3)-(5) (1981);

(c) Any provision by which the buyer agrees not to assert against a seller, or against an assignee, any claim or defense arising from the sale of the consumer goods or services which are the subject matter of the contract;

(d) Any provision by which the buyer grants authority to the seller or assignee to enter the buyer's premises without consent of the buyer obtained immediately prior to entering the premises to repossess the collateral, if any;

(e) Any provision by which the buyer waives any right of action against the seller, assignee, or other person acting on behalf of either, for any illegal act committed in the collection of payments under the contract or in the repossession of goods;

(f) Any provision whereby the buyer executes a power of attorney appointing the seller, assignee, or other persons acting in the seller's behalf, as the buyer's agent in the collection of payments under the contract or in the repossession of collateral security;

(g) Any provision for the payment by the buyer of attorney's fees incurred by the seller or the seller's assignee in the collection of the debt created by the contract; or

(h) Any provision permitting a seller or seller's assignee on default of the buyer to take possession of the goods sold under the contract, unless the contract expressly waives all claims against the buyer for any deficiency between the proceeds of the disposition and the outstanding balance due on the contract.

115.2 Notwithstanding any other provision of this section, any written provision in a retail installment contract or agreement which provides for settlement by arbitration of any controversy thereafter arising out of or related to the contract or agreement or breach of the contract or agreement, or any agreement in writing to submit to arbitration of any controversy, shall not be unenforceable or made invalid by reason of this chapter.

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §3.110.

## 116 RECEIPTS: STATEMENT OF ACCOUNT

116.1 When any payment is made on account of any retail installment contract, the seller receiving the payment shall, if the payment is made in cash, give the buyer a written receipt for the payment including the date and amount of payment.

116.2 If the buyer specifies that the payment is made on one of several obligations, the receipt shall state the obligation(s) to which the payment is to be applied.

116.3 With respect to other than an open end credit plan, within six (6) months after the execution of a retail installment transaction, and within every six-month period thereafter until the buyer has discharged all obligations under the contract, the seller or a subsequent assignee, in addition to any other statements or notices required by this chapter, shall send to the buyer upon written request a statement of account which shall list the following items:

(a) The annual percentage rate or rates;

(b) The amounts, if any, which have become due but remain unpaid, setting forth any charge for delinquencies, expenses of repossession, and extensions; and

(c) The dollar amount not due but still to be paid and the remaining period the agreement is to run.

116.4 The buyer shall be entitled to only one statement under §116.3 in any six-month period free of charge. The sum of one dollar ($1.00) may be charged for each additional written statement requested by the buyer before supplying the additional written statement.

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §4.101.

## 117 ACKNOWLEDGEMENT OF PAYMENT IN FULL

117.1 Promptly on written request and in any event within sixty (60) days after payment of all sums for which the buyer is obligated under a retain installment contract, the seller or assignee shall mail or deliver to the buyer sufficient instruments to indicate payment in full and to release all security in the collateral, if any, under the contract.

117.2 Delivery, including delivery by mail, of the instruments shall be to the buyer's last known address.

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §4.102.

## 118 REPOSSESSION

118.1 If a buyer is in default in the payment of any sum due under a contract subject to this chapter or in the performance of any lawful condition imposed by the

contract, the seller or seller's assignee may when authorized by law repossess the goods secured under the contract.

118.2 Unless the goods can be repossessed with the permission of the possessor obtained immediately prior to the repossession, and without use of force, intimidation, undue influence, fraud, or breach of the peace, the goods shall be not repossessed except by legal process.

118.3 Nothing in this section shall be construed to authorize violation of the criminal laws of the District of Columbia.

118.4 The disposition of repossessed goods and the application of any sums realized by the disposition, shall be in accordance with applicable statutory law, including D.C. Code §§28:9-504 and §§28:9-505 (1996 Repl. Vol.).

118.5 The seller or the seller's assignee must account to the buyer for any surplus from the proceeds of disposition as provided by D.C. Code §28:9-504(2)(1996 Repl. Vol.), notwithstanding the absence of buyer liability for a deficiency.

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §§5.101 and 5.103.

## 119 DUTIES ON REPOSSESSION AND BUYER'S RIGHT OF REDEMPTION

119.1 Within five (5) days after any consumer goods are repossessed, the seller or subsequent assignee shall deliver to the buyer personally, or send to the buyer by registered or certified mail to his or her last known address, a written notice stating the following:

(a) A general description of the goods and a statement that the goods have been repossessed;

(b) The buyer's right to redeem and the amount due and payable;

(c) The buyer's rights with respect to resale of the goods; and

(d) The exact address where the consumer goods are stored and the exact address where any payment is to be made or notice delivered.

119.2 For thirty (30) days after notice has been delivered personally or mailed, the seller or assignee shall retain the repossessed goods, during which period the buyer may redeem the goods and become entitled to take possession of the goods.

119.3 If the seller or assignee does not maintain a place of business within the District at which the buyer may exercise redemption rights, goods repossessed within the District may not be removed from the District unless the goods are repossessed pursuant to legal process and an adequate bond is posted to protect the buyer.

119.4 Whenever repossessed goods are removed from the District, no fee or cost shall be charged to the buyer for transporting the goods outside the District, and upon redemption the goods shall be returned and made available to the buyer within the District without additional transportation charges.

119.5 Notwithstanding any other provisions of this chapter, the redemption period provided in this section may be waived by written agreement between the buyer and the seller following repossession of the goods.

119.6 To redeem the consumer goods, the buyer shall do the following:

(a) Pay or tender the amount due under the installment contract;

(b) Perform or tender performance of any other promise for the breach of which the consumer goods were repossessed; and

(c) Pay actual and reasonable charges for repossession and storage.

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §5.102.

## 120 DE-REGISTRATION

120.1 If the Director of the Department or his or her designee believes there is evidence to indicate a persistent pattern of conduct by a registrant in violation of this chapter, the Department may give notice to the registrant of the Department's intent to hold a hearing to determine whether the registrant's registration under this chapter should be suspended.

120.2 The hearing shall be scheduled not sooner than fifteen (15) days from the date of the notice.

120.3 The notice to be given by the Department shall state the time and place for the hearing and the basis upon which the Department proposes to suspend the registrant's registration.

120.4 The notice shall be served upon the registrant personally or be served by one of the following means:

(a) By leaving the notice at the last business address (or home address, if there is no business address) of which the Department has been given notice by the registrant; or

(b) By mailing the notice by certified mail to the last business address (or home address if there is no business address) of which the Department has been given notice by the registrant; or

(c) In accordance with §103, if the registrant is a non-resident.

120.5 Notice of the hearing shall be published in the *D.C. Register* at least fifteen (15) days prior to the date of the hearing.

120.6 The Department shall conduct the hearing in accordance with the provisions of §10 of the D.C. Administrative Procedure Act (D.C. Code §1-1509 (1992 Repl. Vol.)).

120.7 If, on the basis of the evidence, the Director of the Department or his or her designee is satisfied that the registrant has engaged in a persistent pattern of conduct that is in violation of this chapter, he or she may issue an order suspending the registrant's registration for such time and under such circumstances as the Department deems proper, including, but not limited to a permanent suspension of the registration.

120.8 The Director of the Department is authorized to promulgate rules of procedure to govern such hearings, consistent with the D.C. Administrative Procedure Act.

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §6.101.

## 121 CEASE AND DESIST ORDERS

121.1 If the Director of the Department has a reasonable basis to believe that any person has violated this chapter, he or she may give notice to that person of intent to hold a hearing to determine whether a cease and desist order with respect to the violation(s) should be issued.

121.2 The hearing shall be scheduled not sooner than fifteen (15) days from the date of the notice.

121.3 The notice to be given by the Department shall state the time and place for the hearing and the basis upon which the Department proposes to suspend the registrant's registration.

121.4 The notice shall be served upon the registrant personally or be served by one of the following means:

(a) By leaving the notice at the last business address (or home address, if there is no business address) of which the Department has been given notice by the registrant; or

(b) By mailing the notice by certified mail to the last business address (or home address if there is no business address) of which the Department has been given notice by the registrant; or

(c) In accordance with §103, if the registrant is a non-resident.

121.5 Notice of the hearing shall be published in the *D.C. Register* at least fifteen (15) days prior to the date of the hearing.

121.6 The Department shall conduct the hearing in accordance with the provisions of §10 of the D.C. Administrative Procedure Act (D.C. Code §1-1509 (1992 Repl. Vol.)).

121.7 At the conclusion of the hearing, if the Director of the Department or his or her designee determines, upon the preponderance of testimony and evidence, that the person complained against has violated this chapter, the Director or designee shall do one of the following:

(a) State the findings and issue an order requiring the person complained against to cease and desist from the unlawful conduct and to take such affirmative action including restitution as will effectuate the purposes of this chapter, with notice that if the Department determines that the person complained against has not, after fifteen (15) calendar days following service of its order, corrected the unlawful practice and complied with the order, the Director of the Department will certify the matter to the Corporation Counsel and to such other agencies, as may be appropriate, for enforcement; or

(b) Immediately certify the matter to the Corporation Counsel for civil or criminal enforcement pursuant to this chapter.

121.8 Failure to comply with an order issued pursuant to this section shall constitute grounds for suspension of registration under §120.

121.9 Any certification under this subsection, for the purpose of a civil proceeding, shall constitute a determination that there exists a *prima facie* case of violation of this chapter.

121.10 The Corporation Counsel may institute such civil proceedings in the name of the District of Columbia in an appropriate court, including the seeking of such restraining orders and temporary or permanent injunctions as are necessary to obtain complete compliance with the orders of the Department.

121.11 If, at any time after a complaint has been filed, the Director of the Department believes that appropriate civil action to preserve the *status quo* or to prevent irreparable harm appears advisable, the Director shall certify the matter to the Corporation Counsel who may bring, in the name of the District of Columbia, in an appropriate court, any action necessary to preserve such *status quo* or to prevent such harm, including the seeking of temporary restraining orders and preliminary injunctions.

121.12 If, at the conclusion of the hearing, the Director or his or her designee shall determine upon the preponderance of the testimony and evidence, that the person complained against has not violated this chapter, the Director or designee shall state his or her findings and issue an order dismissing the complaint.

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §6.102.

## 122 REMEDIES AND PENALTIES

122.1 Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of this regulation pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985. Adjudication of any infraction of this regulation shall be pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Infractions Act of 1985.

122.2 Any person who violates any provision of this chapter shall be subject to a penalty or a fine not exceeding three hundred dollars ($300) or imprisonment for not more than ten (10) days for each violation.

122.3 The remedies and penalties set forth in this chapter shall not be deemed to be mutually exclusive. The Department is authorized to pursue such remedies and penalties jointly and concurrently.

122.4 Nothing in this chapter shall prevent any person from exercising any right or seeking any remedy to which he might otherwise be entitled, or from filing any complaint with any other agency.

122.5 Nothing in this chapter shall be deemed to deprive any aggrieved party of such judicial review of orders of the Council or of any other agency or authority of the District of Columbia as may be available.

122.6 If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase, or portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions.

SOURCE: Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §§6.103 through 6-105, 7.101 and 7.102; as amended by §32 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990, D.C Law 8-237, 38 DCR 314, 326 (January 11, 1991).

## 199 DEFINITIONS

199.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

**Buyer** - See: "Retail buyer."

**Consumer goods** - tangible chattels bought by a natural person for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for such goods. The term "consumer goods" does not include goods acquired for commercial or business use or for resale, nor does the term include any motor vehicle as that term is defined in §399 of this title.

**Open end credit** - consumer credit extended on an account pursuant to a plan under which the following apply:

(a) The seller may permit the customer to make purchases or obtain services, from time to time, directly from the seller or indirectly by use of a credit card, or other device, as the plan may provide;

(b) The buyer has the privilege of paying the balance in full or in installments; and

(c) A finance charge, as determined by §106(a) of the Truth in Lending Act (P.L. 90-321, 82 *Stat.* 146), as applicable to retail transactions, may be computed from time to time on an outstanding unpaid balance.

The term "open end credit" does not include negotiated advances under an open end real estate mortgage or a letter of credit.

**Organization** - a corporation, agency, trust, estate, partnership, cooperative, or association.

**Person** - a natural person or an organization.

**Retail buyer or buyer** - a natural person who buys consumer goods or services from a retail seller in a retail installment transaction.

**Retail installment contract** - a contract entered into by a retail buyer and a retail seller evidencing a retail installment transaction involving other than open end credit.

**Retail installment transaction** - any retail transaction between a retail seller and a retail buyer in which there is an agreement for the purchase of consumer goods or services, or both, for which the price is to be paid in one or more deferred installments and the "amount financed" (as defined by Regulation Z of the Board of Governors of the Federal Reserve System) does not exceed twenty-five thousand dollars ($25,000).

The term "retail installment transaction" shall include open end and other than open end transactions, and shall also include any transactions involving a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay compensation for the use of the consumer goods or services, or both, which are the subject of that contract and it is agreed that the bailee or lessee is bound to become, or, for no further (or a merely nominal) consideration, has the option, upon full compliance with the provisions of the bailment or lease, of becoming the owner of the consumer goods or services, or both.

The term "retail installment transaction" shall not include any retail transaction in which all of the following conditions apply:

(a) The purchase price is to be paid in full within not more than ninety (90) days from the initial billing date;

(b) No security interest in the consumer goods is retained by the seller and no other collateral or security is required or accepted by the seller; and

(c) No charge is made as consideration for the deferral of payment or as an incident to the extension of credit.

For the purposes of this chapter, the terms "security interest," "collateral," and "security" shall not be construed to include any mechanics lien.

**Retail seller or seller** - a person engaged in the District of Columbia in the business of selling consumer goods or services involving retail installment transactions.

**Sales finance company** - any person who, in the District, regularly purchases retail installment contracts or evidences of indebtedness arising from retail installment transactions.

**Series of sales** - a series of consumer credit sales transactions made pursuant to an agreement providing for the addition of the deferred payment price of that sale to an existing outstanding balance, where the person to whom the credit is extended has approved in writing both the annual percentage rate or rates and the method of computing the finance charge or charges, and where the creditor retains no security interest in any property as to

which he has received payments aggregating the amount of the sales price including any finance charges attributable thereto.

In the case of items purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same date, the lowest priced shall be deemed first paid for.

**Services** - work, labor, or other kind of activity furnished, or agreed to be furnished, in connection with the delivery, installation, servicing, repair, or improvement of consumer goods; but the term "services" shall not include work, labor, or other activity furnished or agreed to be furnished for which the price or tariff charged or to be charged is required by law to be determined or approved by, or to be filed, subject to approval or disapproval, with the United States, or the District, or a department, division, agency, officer, or official of either of such governments.

**SOURCE:** Regulation No. 71-18, 17 DCR 815 (June 28, 1971); 5P DCRR §1.101.