



State of North Carolina

Office of the Commissioner of Banks

Pat McCrory
Governor

Ray Grace
Commissioner of Banks

Memorandum

To: All Consumer Finance Licensees
From: Molly Sheehan, N.C. Deputy Commissioner of Banks
Date: June 3, 2014
Subject: Revised Administrative Interpretation No. 5

A handwritten signature in cursive script, appearing to read "Molly Sheehan".

Administrative Interpretation No. 5 was issued March 22, 1990, in order to explain the position of the Office of the Commissioner of Banks on the effect of ancillary proceedings and judgments on the contract interest rate for consumer finance loans made under G.S. §§ 53-173 and 53-176. In summary, the original interpretation concluded that an order in an ancillary proceeding is not a final judgment. Therefore, until a final judgment has been entered by the court in a civil action to collect the debt in which there has been an ancillary proceeding to enforce a security interest in the collateral, a consumer loan contract may continue to accrue interest at the contract rate. Administrative Interpretation No. 5 also indicated that when the court entered a "property judgment," the judgment rate of 8% replaces the contract rate of interest from the date of judgment.

As the result of amendments to the Consumer Finance Act (the CFA) by the 2013 Session of the General Assembly, and upon further review of the matter, it is appropriate to republish Administrative Interpretation No. 5 and clarify the effect of an ancillary proceeding and judgment on a consumer finance debt.

Senate Bill 489, enacted as Session Law 2013-162, effective July 1, 2013, repealed the small loan provisions under G.S. § 53-173 (loans up to \$3000), and placed consumer finance loan amounts, rates and maturities under G.S. § 53-176(a). This revision did not, however, eliminate the restriction on interest after judgment of 8% under G.S. § 53-173(c), nor the applicability of this limitation on post-judgment interest for loans made under amended G.S. § 53-176(a). While there are no longer any loans made under G.S. § 53-173(a), G.S. § 53-176(c) continues to subject "loans made pursuant to this section" to a limit on interest after judgment of 8% by cross reference to G.S. § 53-173(c). This limitation is consistent with the post-judgment interest rate of 8% on loans made under G.S. 24-5(a) for credit extended for personal, household or agricultural purposes.

Administrative Interpretation No. 5 recognized that an ancillary proceeding is an interim process by which a court may order the seizure of property taken to secure a loan. It appeared, however, to suggest that an order in an ancillary proceeding was a “property judgment” and that following entry of a property judgment, the debt was merged into the judgment; therefore, the creditor was limited to collecting interest at 8%. This interpretation is revised to recognize that only after there is a final judgment on the merits of an action to collect a debt does the post-judgment limitation of 8% interest apply. An order in an ancillary proceeding is not a final judgment in the matter. Until a final judgment has been entered in the matter, the creditor may continue to collect the contract rate of interest.