



STATE OF ARIZONA
DEPARTMENT OF INSURANCE

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CHARLES R. COHEN
Director of Insurance

Former Director Vern R. Pierson issued the following Circular Letter on December 14, 1987:

Circular Letter 87-6

CREDIT INSURANCE

December 14, 1987

It has come to the attention of the Arizona Department of Insurance that there exists a practice affecting the transfer of credit insurance without prior consent and reenrollment of the individual certificate holder. The purpose of this circular letter is to advise all insurance companies issuing credit insurance that the Department considers such practice to be in violation of Arizona insurance law.

A.R.S. § 20-452.01 states:

No person engaged in the business of financing the purchase of real or personal property or of lending money on the security of real or personal property, and no trustee, director, officer, agent or other employee, or affiliate of, any such person shall require, as a condition precedent to financing the purchase of such property or to lending money upon the security thereof, or as a condition prerequisite for the renewal or extension of any such loan or for the performance of any other act in connection therewith, that the person for whom such purchase is to be financed or to whom the money is to be loaned, or for whom such extension, renewal or other act is to be granted or performed, negotiate any insurance or renewal thereof covering such property through a particular insurer or person transacting insurance.

It is clear that the intent of this statute is to prohibit the conditioning of a loan or a renewal of a loan upon the purchase of a particular type of insurance. However, this statute also provides some bearing on the situation now under review. A.R.S. § 20-452.02.2, states that the above-referenced section shall not prevent,

Any lender from recommending to any borrower or prospective borrower the placing of insurance with a specified

insurer, or through a specified insurer or person transacting insurance, as long as such recommendation does not violate the provisions of § 20-452.01.

Furthermore, A.R.S. § 20-452.02.03 also states that § 20-452.01 shall not prevent, "the free choice of insurer or person transacting insurance by any borrower or purchase at any time."

It is the opinion of the Department that credit life and credit disability insurance must at all times be the choice of the borrower. This applies not only to the initial loan application in which the borrower is given the option of securing credit insurance at the time the loan is obtained, but also occurs during the life of the loan when a change in insurer may be requested or recommended by the lending institution. This is an especially troublesome area when the question involves group credit life or disability insurance in which the lending institution is the policyholder and the borrowers are issued certificates of insurance at the time they obtain the loan. While the lending institution is the "insured" under the master policy, A.R.S. § 20-452.02.3 states clearly that the free choice of insurer belongs to the "borrower" and not necessarily the "insured."

Consequently, it is the opinion of the Department that under individual or group policies, no change in insurer may be made without the prior approval of the borrower. If a lending institution has obtained the requisite statement of authorization described in A.R.S. § 20-452.03 at the time an insurer is changed, then the Department, according to the statute, will consider that to be prima facie evidence of an violation of A.R.S. § 20-452.01. Absent such authorization, however, the Department will exercise its authority granted under A.R.S. § 20-452.04 and investigate such continued activity on a case-by-case basis.

Vern R. Pierson
DIRECTOR OF INSURANCE