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CIVIL CODE - CIV

DIVISION 3. OBLIGATIONS [1427 - 3273.69] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.)*

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.69] (*Part 4 enacted 1872.)*

TITLE 2.9. CREDITOR REMEDIES: DISABILITY INSURANCE [1812.400 - 1812.410] (*Title 2.9 added by Stats. 1983, Ch. 973, Sec. 1.)*

1812.400. The Legislature finds and declares that it is unfair for a creditor who has directly participated in, arranged, or received a commission or other compensation for the sale of credit disability insurance to the debtor, or that creditor's successor in interest, to invoke a creditor's remedy because of a debtor's nonpayment of any sum which has become due during a period of disability until a reasonable time has passed for the disability insurance claim to be filed, verified and processed.

(*Added by Stats. 1983, Ch. 973, Sec. 1.*)

1812.401. For the purposes of this title:

(a) "Credit disability insurance" means insurance of a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.

(b) "Creditor" means the lender of money or vendor or lessor of goods, services, property, rights, or privileges, for which payment is arranged through a credit transaction, who has directly participated in, arranged, or received a commission or other compensation for the sale of credit disability insurance to the debtor, or any successor to the right, title, or interest of any such lender, vendor, or lessor, and an affiliate, associate, or subsidiary of any of them or any director, officer, or employee of any of them, or any other person in any way associated with any of them.

(c) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction.

(d) "Creditor's remedy" means and includes the imposition of any late charge or penalty, the acceleration of the maturity of all or any part of the indebtedness, the collection or assignment for the collection of all or any part of the indebtedness, the commencement of any action or special proceeding, or the enforcement of any security interest in any manner, including, but not limited to, repossession, foreclosure, or the exercise of a power of sale contained in a deed of trust or mortgage.

(e) "Disability claim period" or "claim period" means the period beginning on the due date of the first payment not paid by the debtor for which the debtor claims disability coverage arising from a then current disability and continuing until three calendar months thereafter or until the insurer pays or rejects the claim, whichever occurs sooner.

(f) "Notice" to a creditor means written notice deposited in the United States mail, postage prepaid, addressed to the creditor at the location where payments on the loan or credit transaction are normally required to be sent by the debtor. A creditor may elect to require that written notice, otherwise complying with the requirements of this subdivision, be sent to a different location or may elect to accept telephonic notice to a telephone number specified by the creditor, in either case in lieu of notice being sent to the location where payments are regularly required to be sent, if that location or telephone number is clearly and conspicuously disclosed as the proper place to direct any notice to the creditor relating to any claim of disability on each monthly billing, or on or in each payment coupon book (by adhesive attachment, republication, or otherwise), as the case may be, or (if payments are automatically deducted from an account of the debtor) on the annual statement of loan activity. In any particular instance a creditor may waive the requirement that notice be in writing and accept oral notice.

(*Amended by Stats. 1984, Ch. 1200, Sec. 1. Effective September 17, 1984.*)

1812.402. (a) No creditor, as defined in Section 1812.401, shall invoke any creditor's remedy against a debtor because of the debtor's nonpayment of any sum which becomes due during any disability claim period and for which credit disability insurance coverage, subject to this title, is provided.

(b) Upon initially receiving notice, as defined in subdivision (f) of Section 1812.401, of the debtor's claim of disability, the creditor shall inform the debtor in writing of the name, address, and telephone number of the insurer or its designated representative from whom the debtor may obtain claim forms. Upon receiving notice of the disability claim, the insurer or its designated representative shall send necessary claim forms to the debtor. The debtor shall submit the claim to the insurer or its designated representative and shall notify the creditor, as specified in subdivision (f) of Section 1812.401, that a claim has been submitted.

This subdivision shall apply to the original creditor who sold the disability insurance and shall not apply to that creditor's successor in interest if the successor in interest (1) is not related by common ownership or control to that creditor and (2) has no information regarding the name, address, and telephone number of the insurer or its designated representative.

(c) Nothing in this section prohibits a creditor from invoking any creditor's remedy during or after the claim period for the debtor's nonpayment of any sum due prior to the claim period, whether or not the nonpayment is related to the claimed disability, or for the debtor's nonpayment of any interest, finance charge, or late charge accruing during the claim period of any sum due prior to the period.

(d) Nothing in this section prohibits a creditor from foreclosing a lien on any property to protect that creditor's security interest if a senior lienholder on that property (1) has initiated the foreclosure of its lien, (2) is not prohibited from continuing the foreclosure by any law or order of court, or (3) will not otherwise suspend or delay its foreclosure proceeding until after the disability claim period.

(e) If the insurer pays the claim within the disability claim period, the creditor shall treat each payment made by the insurer as though it were timely made by the debtor. If the insurer rejects the claim within the disability claim period or accepts the claim within the claim period as a partial disability which results in a payment of less than the full benefit which would be paid for the total disability, the debtor shall have the opportunity to pay the entire amount which became due during the claim period or the difference between the amount which became due during the claim period and the amount paid by the insurer for the partial disability without being subject to any creditor's remedy, except the imposition of late charges, for 35 days following the date on which the insurer sends notice of the rejection of the claim or acceptance of the claim as a partial disability. In the event the debtor does not pay the entire amount which became due during the claim period plus any accrued late charges within 35 days from that date, the creditor may then invoke any creditor's remedy.

(f) The obligations of the creditor and debtor pursuant to this section shall be disclosed in writing in at least 10-point type by the creditor to the debtor at the time the creditor sells the insurance, in the manner provided in paragraph (1), and by the insurer to the debtor at the time the insurer sends claim forms pursuant to subdivision (b), in the manner provided in paragraph (2).

(1) The disclosure required by the creditor shall be substantially in the following form:

CLAIM PROCEDURE

If you become disabled, tell us (your creditor) right away. (We advise you to send this information to the same address to which you are normally required to send your payments, unless a different address or telephone number is given to you in writing by us as the location where we would like to be notified.) We will tell you where to get claim forms. Send in the completed form to the insurance company as soon as possible and tell us as soon as you do.

If your disability insurance covers all of your missed payment, WE CANNOT TRY TO COLLECT WHAT YOU OWE OR FORECLOSE UPON OR REPOSSESS ANY COLLATERAL UNTIL THREE CALENDAR MONTHS AFTER your first missed payment is due or until the insurance company pays or rejects your claim, whichever comes first. We can, however, try to collect, foreclose, or repossess if you have money due and owing us or are otherwise in default when your disability claim is made or if a senior mortgage or lien holder is foreclosing.

If the insurance company pays the claim within the three calendar months, we must accept the money as though you paid on time. If the insurance company rejects the claim within the three calendar months or accepts the claim within the three calendar months as a partial disability and pays less than for a total disability, you will have 35 days from the date that the rejection or the acceptance of the partial disability claim is sent to pay past due payments, or the difference between past due payments and what the insurance company pays for the partial disability, plus late charges. You can contact us, and we will tell you how much you owe. After that time, we can take action to collect or foreclose or repossess any collateral you may have given.

If the insurance company accepts your claim but requires that you send in additional forms to remain eligible for continued payments, you should send in these completed additional forms no later than required. If you do not send in these forms on time, the insurance company may stop paying, and we will then be able to take action to collect or foreclose or repossess any collateral you may have given.

(2) The disclosure required by the insurer shall be substantially in the following form:

CLAIM PROCEDURE

Send in the completed form to the insurance company as soon as possible and tell your creditor as soon as you do. (Your creditor has already advised you of the address or telephone number to use to confirm that you have submitted your completed form to the

insurance company.)

If your disability insurance covers all of your missed payments, YOUR CREDITOR CANNOT TRY TO COLLECT WHAT YOU OWE OR FORECLOSE UPON OR REPOSSESS ANY COLLATERAL UNTIL THREE CALENDAR MONTHS AFTER your first missed payment is due or until the insurance company pays or rejects your claim, whichever comes first. Your creditor can, however, try to collect, foreclose, or repossess if you have money due and owing or are otherwise in default when your disability claim is made or if a senior mortgage or lienholder is foreclosing.

If the insurance company pays the claim within the three calendar months, your creditor must accept the money as though you paid on time. If the insurance company rejects the claim within the three calendar months or accepts the claim within the three calendar months as a partial disability and pays less than for a total disability, you will have 35 days from the date that the rejection or the acceptance of the partial disability claim was sent to pay past due payments, or the difference between past due payments and what the insurance company pays for the partial disability, plus late charges. You can contact your creditor who will tell you how much you owe. After that time, your creditor can take action to collect or foreclose or repossess any collateral you may have given.

If the insurance company accepts your claim, but requires that you send in additional forms to remain eligible for continued payments, you should send in these completed additional forms no later than required. If you do not send in these forms on time, the insurance company may stop paying, and your creditor will then be able to take action to collect or foreclose or repossess any collateral you have given.

(g) If a debtor does not make a payment for which the debtor claims disability coverage arising from a then current disability and if the creditor, after sending the debtor notice of the debtor's delinquency, invokes any creditor's remedy because of the nonpayment without knowledge of the debtor's claim of disability coverage, subject to this title, the following provisions apply:

(1) Upon receiving notice of the debtor's claim, the creditor shall not invoke any further creditor's remedy during the remainder of the claim period and the period provided in subdivision (e).

(2) Upon receiving notice, as specified in subdivision (f) of Section 1812.401, of the debtor's claim, the creditor shall rescind every creditor's remedy that has been invoked relating to the delinquency for which coverage is claimed, except that the creditor shall not be obligated to restore property which has been sold in a bona fide lawful sale to any person not related by common ownership or control to the creditor.

(3) The debtor shall be liable for costs and expenses actually incurred in connection with the invocation or rescission of any creditor's remedy.

(4) The creditor shall not be in violation of this title and shall not be liable under subdivision (i) provided the creditor complies with paragraphs (1) and (2) of this subdivision.

(h) The rights and remedies afforded debtors by this title shall be cumulative to each other and to all other rights and remedies which the debtors may have under other laws.

(i) The debtor may bring an action for damages, equitable relief, or other relief for any violation of this title.

(Amended by Stats. 1984, Ch. 1200, Sec. 2. Effective September 17, 1984.)

1812.403. A creditor may invoke any creditor's remedy 15 days after receiving notice that the insurer has ceased making payments on a credit disability insurance claim because of the debtor's failure to timely submit any forms required by the insurer for recertification of a temporary disability.

(Added by Stats. 1983, Ch. 973, Sec. 1.)

1812.404. This title shall apply to a creditor only if the creditor, the predecessor to the right, title, or interest of the creditor, or the representative of either of them directly arranges or participates in the sale or receives a commission or other compensation for the sale of credit disability insurance to the debtor.

(Added by Stats. 1983, Ch. 973, Sec. 1.)

1812.405. This title shall not prohibit a creditor from invoking any creditor's remedy as a result of a debtor's nonpayment when due of any amount obtained under an open-end credit plan, as hereafter defined, after the debtor has given notice of a disability claim unless the nonpayment is related to a covered disability then affecting the debtor other than the disability previously claimed. The creditor's termination of the open-end credit plan because the debtor does not meet the creditor's customary credit standards at the time the debtor notifies the creditor of the disability claim is not a creditor's remedy.

An "open-end credit plan" means credit extended by a creditor under a plan in which the creditor reasonably contemplates repeated transactions, the creditor may impose a finance charge from time to time on an outstanding unpaid balance, and the amount of credit that may be extended to the debtor during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

(Added by Stats. 1983, Ch. 973, Sec. 1.)

1812.406. (a) This title does not apply to credit disability insurance covering a key person, as hereinafter defined, which a creditor requires as a condition to making a loan of at least twenty-five thousand dollars (\$25,000) to be used in the operation of a business in which the key person is employed or has an ownership interest.

For the purposes of this subdivision, a "key person" is a person who the creditor and the debtor or debtors mutually agree must be involved in the operation of the business to assure its success.

(b) This title does not apply to a loan or other credit transaction (including an open line of credit) of more than 10 years' duration which is secured by a mortgage or deed of trust unless (1) the principal purpose of the loan or credit transaction is for the construction (other than initial construction), rehabilitation, or improvement (including "home improvement" as defined in Section 7151 of the Business and Professions Code) of real property consisting of four or fewer residential units, and (2) any document incident to the loan or credit transaction at the time the loan or extension of credit is made, or any course of dealing between the creditor and a contractor or material supplier assisting the borrower in obtaining the loan or extension of credit, would indicate that purpose.

(c) Subdivision (b) shall not apply to debtors who were entitled to receive notice from the creditor pursuant to subdivision (f) of Section 1812.402 on or after January 1, 1984, and prior to the effective date of the act which added this subdivision, unless the debtor receives written notice that the remedies provided in this title are revoked, the debtor is given an opportunity to cancel the coverage, and no claim has been made or notice provided as specified in Section 1812.401. If the debtor fails to cancel the insurance following receipt of the notice required under this subdivision, subdivision (b) shall apply to that policy upon payment by the debtor of the next installment of premium, whether to the insurer or to a creditor pursuant to a premium finance agreement.

(Amended by Stats. 1984, Ch. 1200, Sec. 3. Effective September 17, 1984.)

1812.407. The provisions of this title shall apply to the nonpayment of any sum which becomes due on or after April 1, 1984, and for which the debtor claims disability coverage.

(Added by Stats. 1983, Ch. 973, Sec. 1.)

1812.408. Any waiver by the debtor of the provisions of this title shall be void and unenforceable.

(Added by Stats. 1983, Ch. 973, Sec. 1.)

1812.409. This title shall not affect or defeat an interest in the debtor's property, acquired after the creditor invokes a creditor's remedy in violation of this title, by a bona fide purchaser or encumbrancer for value and without notice of facts that constitute a violation of this title.

(Added by Stats. 1984, Ch. 1200, Sec. 4. Effective September 17, 1984.)

1812.410. If any provision of this title or the application thereof to any person or circumstance is held to be unconstitutional, the remainder of the title and the application of the provision to other persons and circumstances shall not be affected thereby.

(Added by renumbering Section 1812.409 by Stats. 1984, Ch. 1200, Sec. 5. Effective September 17, 1984.)