

TITLE 31
TRADE PRACTICES AND CONSUMER
PROTECTION

- Chapter 1 Uniform Consumer Credit Code Regulations
2 Office of Consumer Counsel

CHAPTER 1
UNIFORM CONSUMER CREDIT CODE REGULATIONS

NOTE: Rule making authority cited for formulation of Consumer Credit Code Regulations by the Administrator (Savings and Loan Commissioner), §1806.104, Guam Uniform Consumer Credit Code.

The Uniform Consumer Credit Code is found in Title II, Chapters 1 and 2, §§1801.101-1812 of the Civil Code.

§1101. Rules and Regulations Incorporated by Reference. Rules and regulations for the Uniform Consumer Credit Code are incorporated herein by reference. (The aforementioned rules and regulations can be found in Title XI Investment, Chapter 4, Savings and Loan Commissioner, Subchapter B, Guam Admin. Rules.)

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NOTE: Rule making authority cited for formulation of regulations for the Office of Consumer Counsel by the Consumer Counsel, §§53633 and 53637, Government Code.

The regulations of the Office of Consumer Counsel are reprinted here in form as exact as possible to those filed with the Legislative Secretary. The substance of the regulations has not been changed. However, for the purpose of uniformity and ease of use, a new system of numbering has been adopted by the Editor. It is hoped that the revised numerical system will eventually be substituted for that formulated by the Consumer Counsel.

**The Office of Consumer Counsel was merged into the
Attorney General's Office in 1976. It is now a function of
that office.**

§1101. Investigations: How Initiated. Office of Consumer Counsel investigations and inquiries may be originated upon the request of the Governor, the Legislature of Guam, agencies or departments of the government of Guam; upon referrals by the courts; upon complaint by members of the public; or by the Office of Consumer Counsel upon its own initiative with the approval of the Attorney General.

§1102. Same: Request for Consumer Counsel Action.

(a) Any individual, partnership, corporation, association, or organization may request the Office of Consumer Counsel to institute and investigation in respect to any matter over which the office of Consumer Counsel has jurisdiction.

(b) Such request should be in the form of a signed statement setting forth the alleged violation of law with such supporting information as is available, and the name and address of the person or persons complained of. No forms or formal procedures are required.

(c) The person making the request is not regarded as a party to any proceeding which might result from the investigation.

(d) It is the general policy of the Office of Consumer Counsel not to publish or divulge the name of an applicant or complaining party except as required by law or by the rules or regulations of the Office of the Consumer Counsel. Where a complaint is by a consumer or consumer representative concerning a specific consumer product or service, the Office of Consumer Counsel, in the course of referral of the complaint or of an investigation, may disclose the identify of the complainant or complainants. In referring any such consumer complaint, the Office of the Consumer Counsel specifically retains its right to take such action as it deems appropriate in the public interest and under any of the statutes falling within the scope of its authority.

§2103. Same: Investigational Policy. The Office of Consumer Counsel encourages voluntary cooperation in its investigations. Where the public interest requires, however, the Office of Consumer Counsel may, in any matter under investigation, invoke any or all of the compulsory processes authorized by law.

§2104. Same: By Whom Conducted. Inquiries and investigations are conducted under the various statutes falling within the scope of authority of the Office of Consumer Counsel by representative of the Office of Consumer Counsel designated and duly authorized for that purpose. Included among the duties of such representatives is the administration of oaths and affirmations in any matter under investigation by the Office of consumer Counsel.

§2105. Same: Notification of Purpose. Any person under investigation compelled or requested to furnish information or documentary evidence shall be advised with respect to the purpose and scope of the investigation.

§2106. Same: Subpoenas in Investigations. (a) The Office of Consumer Counsel may issue a subpoena directing the person named therein to appear before a designated representative at a designated time and place to testify or to produce documentary evidence, or both, relating to any matter under investigation by the Office of the Consumer Counsel.

(b) Any motion to limit or quash any investigational subpoena shall be filed with the Office of Consumer Counsel within ten (10) days after service of the subpoena, or if the return date is less than ten (10) days after service of the subpoena, within such other time as may be allowed.

§2107. Same: Investigational Hearings. (a) Investigational hearings shall be presided over by the Consumer Counsel, or a duly designated representative, for the purpose of hearing the testimony of witnesses and receiving documents and other data relating to any subject under investigation. Such hearings shall be stenographically reported and a transcript thereof shall be made a part of the record of the investigation.

(b) Unless otherwise ordered by the Office of Consumer Counsel, investigational hearings shall not be public.

§2108. Same: Rights of Witnesses in Investigations. (a) Any person compelled to submit data to the Office of Consumer Counsel or to testify in an investigational hearing shall be entitled to retain a copy or, on payment of lawfully prescribed costs, procure a copy of any document submitted by him and of his own testimony as stenographically reported, except that in a non-public hearing the witness may for good cause be limited to inspection of the official transcript of his testimony.

(b) Any witness compelled to appear in person in an investigational hearing may be accompanied, represented, and advised by counsel as follows:

(1) Counsel for a witness may advise his client, in confidence, and upon the initiative of either himself or the witness, with respect to any question asked of his client, and if the witness refused to answer a question, the

counsel may briefly state on the record if he has advised his client not to answer the question and the legal grounds for such refusal.

(2) Where it is claimed that the testimony or other evidence sought from the witness is outside the scope of the investigation, or that the witness is privileged for reasons other than self-incrimination (which may only be asserted by the witness personally), or refuse to answer a question or to produce other evidence, counsel for the witness may object on the record to the question or requirement and may state briefly and precisely the grounds therefor.

(3) Any objections made during the course of an investigational hearing will be treated as continuing objections and preserved throughout the further course of the hearing without the necessity for requiring them as to any similar line of inquiry. Cumulative objections are unnecessary. Repetition on the grounds for any objections will not be allowed.

(4) Counsel for a witness may not, for any purpose or to any extent not allowed by subparagraphs 91) and (2) of this paragraph, interrupt the examination of the witness by making any objections or statements on the record. Motions challenging the Office of Consumer Counsel' authority to conduct the investigation or the sufficiency or legality of the subpoena must have been addressed to the Office of Consumer Counsel in advance of the hearing.

Copies of such motions may be filed with the presiding official as part of the record of the investigation but no arguments in support thereof will be allowed at the hearing.

(5) Following completion of the examination of a witness, counsel for the witness may on the record request the presiding official to permit the witness to clarify any of his answers which may need clarification in order that they may not be left unequivocal or incomplete on the record. The granting or denial of such request shall be within the sole discretion of the presiding official.

(6) The presiding official shall take all necessary action to regulate the course of the hearing to avoid delay and to prevent or restrain disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language. Such official, if not the Consumer Counsel himself, shall, for reasons stated on the record,

immediately report to the Consumer Counsel any instances where an attorney has refused to comply with his directions, or has been guilty of disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language in the course of the hearing. The Consumer Counsel either upon receipt of such report or upon his own observation, will take such further action, if any, as the circumstances warrant, including suspension or disbarment of the attorney from further practice before the Office of Consumer Counsel or exclusion from further participation in the particular investigation.

(c) The term *presiding official*, as used in these regulations means and applies to the Consumer Counsel or any of his designated representatives when presiding at a hearing.

§2109. Same Depositions. The Office of Consumer Counsel may order testimony to be taken by deposition in any investigation at any stage of such investigation. Such depositions may be taken before any person having power to administer oaths who maybe designated by the Office of the Consumer Counsel. The testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence a provided in **1.6 through 1.8 (§23100.5 - 23100.7 Guam Admin. Rules).

§2110. Same: Orders Requiring Access. (a) The Office of Consumer Counsel may issue an order requiring any corporation, partnership and individual being investigated to grant access to files for the purpose of examination and the right to copy any documentary evidence. The Office of Consumer Counsel may, for good cause shown, extend the time prescribed for compliance with orders requiring access issued during the investigation of any matter.

(b) Any motion to limit or quash an order requiring access shall be filed with the Office of consumer Counsel within ten (10) days after service of the order, or, if the date of r compliance is less than ten (10) days after service of the order, within such other time as may be allowed.

§2111. Same: Reports. (a) The Office of Consumer Counsel may issue an order requiring a corporation, partnership and individual to file a report or answers in writing to specific questions relating to any matter under

investigation. The Office of Consumer Counsel may, for good cause shown, extend the time prescribed for compliance with orders requiring reports or answers to questions issued during the investigation of any matter.

(b) Any motion to limit or quash an order requiring a report or answers to specific questions shall be filed with the Office of Consumer Counsel within ten (10) days after service of the order, or, if the date for compliance is less than ten (10) days after service of the order, within such other time as may be allowed.

§2112. Same: Noncompliance with Investigational Processes. In cases of failure to comply with investigational processes of the Office of Consumer Counsel, appropriate court action may be initiated.

§2113. Same: Disposition. When a matter which has been investigated is not subject to informal disposition pursuant to Chapter 2 (§23101 Guam Admin. Rules) of these regulations and investigation indicates that corrective action is warranted, further proceedings may be instituted pursuant to the provisions of Chapter 3 (§23102 Guam Admin. Rules) of the regulations; provided, however, that any individual, partnership, or corporation being investigated may be afforded an opportunity to submit a proposal for disposition of the matter in the form of an executed consent form agreement complying with the requirements of *3.3 (§23102.2 Guam Admin. rules), for consideration by the Office of Consumer Counsel in connection with a Notice of Probable Violation submitted simultaneously by the Office of Consumer Counsel.

§2114. Informal Enforcement Procedure: Voluntary Compliance. (a) The Office of Consumer counsel, when it has information indicating that a person or persons may be engaging in a practice which may involve violation of a law which falls within its scope of authority, and if it deems the public interest will be fully safeguarded thereby may afford such persons or persons the opportunity to have a matter disposed of on an informal basis.

(b) In determining whether the public interest will be fully safeguarded through such informal administrative action, the Office of Consumer Counsel will consider:

- (1) The nature and gravity of the alleged violation;
- (2) The prior record and good faith of the parties involved; and

(3) Other factors, including, where appropriate, adequate assurance of voluntary compliance.

(c) The office of the Consumer Counsel, whenever it deems the interest of consumers to warrant such action, may enter into an agreement or agreements with any person or persons engaging in commerce in Guam, for the purpose of securing compliance with consumer interest legislation applicable in Guam, and for securing other benefits for consumers in Guam.

§2115. Formal Voluntary Compliance and Consent Procedures: Notice of Probable Violation. Where time, the nature of the proceeding and the public interest permit, the Office of Consumer Counsel may notify a person, partnership, or corporation of its having reason to believe that such party violated one or more of the statutes falling within the scope of authority of the Office of Consumer Counsel. Notice which will be captioned "Notice of probable violation", will be accompanied by a proposed form of agreement, whenever the provisions of a federal statute are involved. No provision in these Regulations prohibits the use of authority granted to the Consumer Counsel by *53612, as amended, of Volume 3 of the Government Code of the Territory of Guam.

§2116. Same: Reply. (a) Within ten (10) days after service of such Notice, the party named in the Notice of Probable Violation may file with the Office of Consumer Counsel (1) an Assurance of Voluntary Compliance with respect to any method, act, or practice deemed to be violative of *53611 of Volume 3 of the Government Code of the Territory of Guam, or (2) with respect to suspected violations of federal law, a reply stating whether or not he is interested in having the proceeding disposed of by formal agreement.

(b) If no Assurance of voluntary Compliance is filed with the Office of Consumer Counsel within the time provided, appropriate enforcement action will be taken as described in *3.6 (§23102.5 Guam Admin. rules) of these regulations. If an Assurance of Voluntary Compliance is filed, within the time provided and to the satisfaction of the Consumer Counsel, action may be taken under *53613, as amended, of Volume 3 of the Government Code of the Territory of Guam.

(c) If a reply is in the negative or if no reply is filed with the Office of Consumer Counsel within the time provided, appropriate enforcement action will be taken as

described in *3.6 (§23102.5 Guam Admin. rules) of these regulations. If the reply is in the affirmative, the party served will be afforded the opportunity to execute an appropriate agreement for consideration by the Office of Consumer Counsel.

§2117. Same: Agreement. Every agreement shall contain provisions that the Notice of Probable Violation may be used in construing the terms of the agreement, and that no understanding, representation, or interpretation not contradict the terms thereof; and that the Consumer Counsel may cancel the agreement if, within ten (10) days after the agreement has been signed, comments or views submitted to the Office of Consumer Counsel disclose facts or considerations which indicate that the agreement is inappropriate, improper, or inadequate. IN addition, the agreement may contain a statement that the signing thereof is for settlement purposes only and does not constitute an admission by any party that the law has been violated as alleged in the Notice of Probable Violation.

§2118. Same: Disposition. (a) If an agreement is reached and signed, the Office of Consumer Counsel will place it on the public record for a period of ten (1) days, during which time it will receive and consider any comments or views concerning the agreement that may be filed by any interested persons. At the termination of that ten (10) day period, the Office of Consumer Counsel may cancel the agreement and so notify the other party, in which event it will take such other actions as it may consider appropriate.

(b) If an agreement is not reached, or if it appears that an agreement will not be reached, and more than thirty (30) days have elapsed since the filing of the reply as provided in *3.2 (§23102.1 Guam Admin. Rules) of these regulations, the procedure described in this chapter will not be available, and the Officer of Consumer Counsel will take action as it may consider appropriate. However, in exceptional and unusual circumstances, the Office of Consumer Counsel may, upon request and for good cause shown, attempt to negotiate a settlement by the entry of a formal agreement, notwithstanding that more than thirty (30) days have elapsed since the filing of an affirmative reply without there having been an agreement reached.

§2119. Same: Notice of Probable Violation Included in Public Records. Notices of Probable Violation and proposed agreements under *3.1 (§23102 Guam Admin.

Rules) are included in the public records of the Office of Consumer Counsel. All negotiations and communications under *3.2, 3.3, and 3.4 (§§23102.1-23102.3, Guam Admin. Rules) will constitute a part of the confidential records of the Office of Consumer Counsel, except to the extent otherwise specifically provided therein.

§2120. Same: Enforcement Actions. In every instance where a Notice of Probable Violation and a proposed agreement was served, and no timely satisfactory assurance or reply was filed, or a negative reply was filed, or an affirmative reply was filed but no agreement was reached within thirty (30) days of the filing of the reply, the Office of Consumer Counsel shall take appropriate measures to enforce or effectuate the enforcement of those statutes which were believed to have been violated. These measures may include the commencement of proceedings in the Superior Court or in the District Court of Guam or the active cooperation with the Federal officials charged with prosecuting violations of the Federal antitrust and consumer protection laws.

§2121. Appearances. (a) Qualifications.

(1) Members of the bar of a Federal court or of the highest court of any State or Territory of the United States are eligible to practice before the Office of Consumer Counsel.

(2) Any individual or member of a partnership involved in any proceeding or investigation may appear on behalf of himself or of such partnership upon adequate identification. A corporation or association may be represented by a bona fide officer thereof upon a showing of adequate authorization.

(b) **Notice of Appearance.** Any attorney desiring to appear before the Office of Consumer Counsel on behalf of a person or party shall file with the Office a written notice of his appearance, stating the basis of his eligibility under this section. No other application shall be required for admission to practice, and no register of attorneys will be maintained.

(c) **Standards of Conduct: Disbarment.**

(1) All attorneys practicing before the Office of Consumer Counsel shall conform to the standards of ethical conduct required of practitioners in the courts of the United States and by the bars of which the attorneys are members.

(2) If for good cause shown, the Consumer Counsel shall be of the opinion that any attorney is not conforming to such standards, or that he has been otherwise guilty of conduct warranting disciplinary action, the Consumer Counsel may issue an order requiring such attorney to show cause why he should not be suspended or disbarred from practice before the Office of consumer Counsel. The alleged offender shall be granted due opportunity to be heard in his own defense and may be represented by counsel. Thereafter, if warranted by the facts, the Consumer Counsel may issue against the attorney an order of reprimand, suspension, or disbarment.

§2122. Time. Computation of any period of time prescribed or allowed by these regulations or by order of the Office of consumer Counsel shall begin with the first calendar day following that on which the act, event, or development initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday or other day on which the Office of consumer counsel is closed, the period shall run until the end of the next following business day.

§2123. Service and Filing. (a) **By the Office of Consumer Counsel.** Service of notices, orders, and other processes of the Office of Consumer Counsel may be effected as follows:

(1) **By registered mail.** A copy of the document shall be addressed to the person, partnership, corporation, or unincorporated association to be served at his or its residence or principal office or place of business, registered, and mailed; or

(2) **By delivery to an individual** A copy thereof may be delivered to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation or unincorporated association to be served; or

(3) **By delivery to an address.** A copy thereof may be left at the principal office or place of business of the person, partnership, corporation, or unincorporated association, or it may be left at the residence of the person or of a member of the partnership or of an executive officer or director of the corporation, or unincorporated association to be served.

(b) **Upon the Office of Consumer Counsel.** Service of documents upon the Office of Consumer Counsel shall be

by personal delivery or by delivery by first class mail. A document is deemed filed when it has been received by the Office of Consumer Counsel.