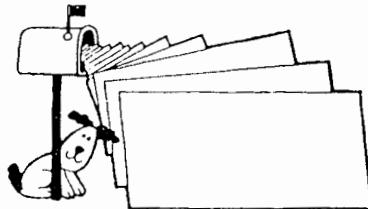


## REASONABLE NOTICE MEANS SEPARATE NOTICE



If a creditor seeks to recover a deficiency balance from debtors after its repossessed collateral has been sold, it must pay particular attention to the manner in which notice of the sale is given to all parties.

The importance of reasonable notice was articulated by the Supreme Court of Kentucky in a 1991 case:

Notice to the debtor that the collateral is about to be disposed of is so fundamental that no remedy less severe than forfeiture of the deficiency amount would be adequate and this remedy is by no means exclusive. In a proper case criminal and tort liability may be imposed ....

Holt v. The Peoples Bank of Mt. Washington, Ky. 814 S.W.2d 568, 570.

Most creditors are probably aware of the importance placed upon reasonable notice by the Uniform Commercial Code and

the courts. (See *Arrow* Issue No. 5, page 1, August, 1989). However, the fact that reasonable notice requires individual notice to co-debtors and/or co-signers who reside at the same address may escape creditors' attention.

A decision by the Kentucky Court of Appeals is illustrative of the point: Central Bank & Trust Co. v. Metcalfe, Ky. App., 663 S.W.2d 957. In Metcalfe, the creditor was denied recovery of the deficiency

balance against a co-signer on an automobile installment contract. The principal debtor was a son, and the co-signers were his father and step-mother. Apparently, the father and step-mother signed the contract individually, and not as "Mr. and Mrs." After the creditor repossessed the automobile upon default, however, it sent a single notice to the address given in the contract, addressed to "Mr. and Mrs."

Unknown to the creditor, Mrs. Co-signer was no longer in residence at the address given on the contract. The Court found that since notice could not be forwarded to Mrs. Co-signer as addressed, she did not receive reasonable notice under KRS 355.9-504.

Although the facts under which notice was found insufficient in the Metcalfe case may seem sufficiently obscure, there is an important lesson for creditors. When sending notice to co-signers, who reside at the same address, whether a married couple or perhaps especially in the case of unmarried cohabitants, the creditor should take care to send individual notice in order to avoid the consequences of the Metcalfe decision. □