The State of South Carolina
Department of Consumer Affairs
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Administrative Interpretation No. 1.202-8110

MOBILE HOME SECURED CONSUMER LOANS ARE NO LONGER SUBJECT TO FEDERAL PREEMPTION BY SECTION 501(a)(1) OF THE DEREGULATION ACT OF 1980 AND THEREFORE ARE ORDINARILY GOVERNED BY CONSUMER PROTECTION CODE RATE AND CHARGE LIMITATIONS

You have asked for an interpretation of the Consumer Protection Code as it applies to certain mobile home loans. Your client is a supervised lender who makes direct loans to consumers to purchase mobile homes secured by a first lien on the mobile home. Consumers obtaining these loans intend to use the mobile homes as residences. Some loans are also for the purpose of purchasing the land on which the mobile home will sit as well as the mobile home itself, in which case a real estate mortgage is taken as additional security.

Your first question was whether the override provision of H2164 which reinstates the terms of Act 7 of 1979 affects the federal preemption of State rate limitations on loans secured by first liens on mobile homes. In our opinion the answer is yes, South Carolina has overridden federal preemption of maximum rates on such loans with the result that Consumer Protection Code Section 37-3-201 (Cum. Supp. 1980) applies to certain mobile home loans.

Section 501(a)(1) of Title V of the Depository Institutions Deregulation and Monetary Control Act of 1980 ("Deregulation Act"), Public Law 96-221 as amended, provides in pertinent part:

> The provisions of ... law of any State expressly limiting the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, credit sale, or advance which is
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> (A) secured ... by a first lien on a residential manufactured home;
> (B) made after March 31,1980; and
> (C) described in Section 527(b) of the National Housing Act (12 U.S.C. 1735f-5(b)) [with certain enumerated exceptions].

That federal law preempted South Carolina laws limiting finance and other

charges on some credit transactions including those secured by a first lien on residential manufactured homes (mobile homes) under certain circumstances. Section 501(b)(2) of that same law permits States to override the federal preemption before April 1, 1983. South Carolina, at least partially, overrode federal preemption in Section 3 of Act No. 6 of 1981 (R16, H2164) effective March 2, 1981 which provides:

> The State of South Carolina does not want the provisions of subsection (a)(1) of Section 501 of Public Law 96-221, as amended, The Depository Institution [sic] Deregulation in [sic] Monetary Control Act of 1980, to apply with respect to loans, mortgages, credit sales and advances made in South Carolina under the provisions of Act 7 of 1979. This provision is enacted under the authority and intended to meet the requirements of subsection (b)(2) of Section 501 of Public Law 96-221 permitting the State to override federal preemption of the state's mortgage usury laws as related to the provisions of Act 7 of 1979. (Emphasis added)

In our opinion, as stated in Administrative Interpretation No. 2.104-8105 of July 9, 1981, South Carolina overrode federal preemption with regard to loans having some relationship to Act No. 7 of 1979 but left the federal preemption in place with regard to credit sales secured by a first lien on a residential manufactured home. Although you gave some good arguments against our conclusion that mobile home loan rate ceilings are not preempted, we stick by our original interpretation that "[t]he effect of the General Assembly's overriding Section 501(a)(1) of the Deregulation Act with regard to transactions that have some relationship to Act No. 7 of 1979 on the Consumer Protection Code, in the Department's opinion, is that all rates and charges on consumer loans secured by a first lien on residential real property or residential manufactured homes that were governed by the Consumer Protection Code prior to the Deregulation Act are once again governed by the Consumer Protection Code." A.I. No. 2.104-8105 at p. 3.

According to your argument, Act No. 7 of 1979 does not address mobile home secured and other non-real estate secured consumer loans and therefore preemption of rate ceilings on those loans should not be affected. However, Section 2 of Act No. 7 of 1979, as amended by Section 1A of Act No. 6 of 1981 (R16, H2164), says:

> A consumer loan not excluded by Section 37-1-202 of the 1976 Code shall be subject to all provisions of the Consumer Protection Code, provided that for purposes of this section, a

> person other than an organization who makes not more than ten consumer loans in a year shall be deemed to be a supervised financial organization. [The 1981 amendment changed the word "five" to "ten."]

Section 1 of Act No. 7 of 1979 as amended states the general rule that until June 30, 1985 parties to a first mortgage real estate secured loan may contract for any rate of interest subject to three exceptions. The two exceptions in Sections 3 and 4 of Act No. 7 of 1979 as amended concerning certain loans of $100,000 or less and others excluded from the Consumer Protection Code clearly say "this Act shall not apply" to certain loans. The other exception concerning consumer loans not excluded from the Consumer Protection Code is in Section 2 of Act No. 7 of 1979 as amended quoted above. But Section 2 has an independent meaning as well. First, that section was intended to allow individuals making only a few consumer loans to have the same status as a supervised financial organization. Further, it is a reaffirmation of the general rule of construction that the Consumer Protection Code is intended to be a unified coverage of its subject matter and will not be deemed to be impliedly repealed if such a construction can be avoided. CPC §37-1-104 (1976). In other words, even without Section 2 of Act No. 7 of 1979, first mortgage consumer loans not excluded from the Consumer Protection Code would still have been governed by the Consumer Protection Code's rate ceilings, in our opinion. Note that Section 2 of Act No. 7 of 1979 has been temporarily codified in the unofficial 1980 Cumulative Supplement to the 1976 S.C. Code as §37-1-202a.

In our opinion, the General Assembly must have intended that all consumer loans not excluded by Section 37-1-202, including mobile home secured loans, have the requisite relationship to Act No. 7 of 1979 to be affected by South Carolina's override in Act No. 6 of 1981 of federal preemption of rate ceilings. Were we to conclude otherwise, what would be the result? If the General Assembly has overridden federal preemption only with regard to first mortgage real estate secured loans made under the authority of Section 1 of Act No. 7 of 1979, as amended, the practical effect would be a nullity: loans which were subject to no ceiling under federal law [§501(a)(1)], now overridden, would be subject to no ceiling under State law [§1 of Act No. 7 of 1979]. We must presume that our legislature intended to accomplish something and not do a futile act. State v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). Our interpretation results in consumer loans - whether secured by first liens on real estate or mobile homes - whose rate ceilings had been preempted by federal law, once again being subject to State imposed ceilings on finance charges. This is in addition to some loans being subject to no rate ceiling as a matter of State, not federal, law.

Because we have concluded that State, not federal, law governs maximum rates on such loans, you had an additional question: whether the exclusion in Consumer

Protection Code Section 37-1-202(11) for "first mortgage loans made to enable the debtor to build or purchase a residence" encompasses either a mobile home loan to purchase a mobile home secured only by the mobile home itself or a loan to purchase both the mobile home and the land on which it will sit secured by both the mobile home and the land. In our opinion the exclusion covers only the latter.

Subsection (11) of Section 37-1-202 as amended by Section 1B of Act No. 6 of 1981 (R16, H2164) says:

> [This title does not apply to] First mortgage loans made to enable the debtor to build or purchase a residence, when made by a lender whose loans are subject to supervision by an agency of this State or of the United States or made by a Federal Housing Administration approved mortgagee or made by a lender who is a person other than an organization who makes not more than ten consumer loans in a single calendar year. (Emphasis added)

In Administrative Interpretation No. 1.202-7903 of March 19, 1979 we said that "residence" for purposes of exclusion from the Consumer Protection Code means any real property in which the consumer resides or expects to reside including a vacant lot. Mobile homes, as we interpret South Carolina law, are ordinarily classified as personal property although at some point they may become part of realty. For purposes of your questions we assume that the mobile homes are considered to be personal property at the time they are purchased. When a mobile home loan is secured only by a first lien on the mobile home, it cannot qualify for exclusion in our opinion because it is not secured by a first mortgage on real property. On the other hand, when land is purchased along with the mobile home and one loan is made to enable the consumer to purchase both the mobile home and the land secured by a first mortgage on the land, and the consumer intends to reside there, the loan qualifies as a "first mortgage loan made to enable the debtor to purchase a residence."

While we appreciate your argument that because a consumer intends to live in a mobile home it should be considered a "residence" for purposes of the exclusion, we are not convinced that the General Assembly intended to blur the distinction between real and personal property for purposes of exclusion from the Consumer Protection Code as has been done under federal law such as the Deregulation Act. Thus we continue to interpret the term "residence" in this context to involve real property only.

In summary, it is the opinion of this Department that a consumer loan secured by a first lien on a residential manufactured home (mobile home) is ordinarily subject to the Consumer Protection Code including rate ceilings on finance

charges because the General Assembly has overridden, in part, the Deregulation Act. However, it is our further opinion that such a consumer loan also secured by a first mortgage on the lot on which the mobile home will sit is excluded from the Consumer Protection Code under Section 37-1-202(11) if the lender qualifies for the exclusion. See Administrative Interpretation No. 3.508-7910 of June 5, 1979. It should be noted that this interpretation applies only to direct loans and not bona fide sales, whether or not assigned to a financial institution, which are governed by law applicable to sales.

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