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ADMINISTRATOR  
AND  
CONSUMER ADVOCATE

# The State of South Carolina

## Department of Consumer Affairs

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Administrative Interpretation No. 3.405-7917

RATE AFTER MATURITY OF A CONSUMER LOAN EXCEEDING THAT AGREED TO AND PERMITTED FOR THE TRANSACTION ORIGINALLY RESULTS IN AN UNAUTHORIZED DEFAULT CHARGE.

You have asked whether an interest rate after maturity of a consumer loan which exceeds the rate contracted for during the original term of the loan results in an unauthorized default charge. Your question was prompted by the recent decision in Turner Coleman, Inc. v. Ohio Construction & Engineering, Inc. et al.,        S.C.       , 251 S.E.2d 738 (1979) which held that parties to a transaction who agree to a legally permissible rate of interest after maturity of the transaction also determine the rate after judgment. See Administrative Interpretation No. 1.108-7916, issued September 18, 1979.

Your client, a bank and thus a supervised financial organization as defined in the Consumer Protection Code, is authorized to charge rates on consumer loans not in excess of those permitted for supervised lenders in Consumer Protection Code Sections 3.508 and 3.515, S.C. Code Ann. §§ 37-3-508, 37-3-515 (Cum. Supp. 1978), and is otherwise limited as to charges by Part 2 of Chapter 3 on consumer loans. Consumer Protection Code §§ 3.502, 3.513, S.C. Code Ann. §§ 37-3-502, 37-3-513 (Cum. Supp. 1978).

Administrative Interpretation No. 3.203-7611 issued November 19, 1976, pointed out three options a supervised lender has for receiving compensation at approximately the contract rate for amounts remaining unpaid after the original maturity date of a precomputed supervised loan. An amount in excess of that permitted and agreed to for that precomputed transaction, in our opinion, is an unauthorized default charge. Likewise, while a precomputed supervised loan is limited by the delinquency and deferral charge provisions with regard to charges that may be contracted for and made after the original maturity date of the transaction, in our opinion a supervised loan that is not precomputed is limited to a rate of finance charge no higher than that agreed to for the original term of the loan.

Consumer Protection Code Section 3.405, S.C. Code Ann. § 37-3-405 (Cum. Supp. 1978), provides in part:

Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer loan may not provide for charges as a result of default by the debtor other than those authorized by this title. (emphasis added)

TELEPHONES [AREA CODE 803]

ADMINISTRATION  
758-3017

CONSUMER COMPLAINTS  
758-2040  
WATS 1-800-922-1594

PUBLIC INFORMATION  
758-7546

NOTIFICATION  
758-8587

CONSUMER ADVOCACY  
758-5864

This section of the Consumer Protection Code is based on Section 3.405 of the Official 1968 Text of the Uniform Consumer Credit Code. The official comment to UCCC Section 2.414, the parallel default charge provision relating to sales, says in part:

This Act limits the credit-related charges a [creditor] may impose on a [consumer] not only at the outset of the contract but also at the default stage. Except for delinquency charges . . . , attorney's fees . . . , and expenses arising from realizing on collateral . . . the [creditor] may impose no collection or default charges on a [consumer]. (citations omitted)

A supervised loan that is not precomputed is one in which the loan finance charge is based on unpaid balances, such as an "interest bearing" loan with interest computed daily on the outstanding balance of the account. The loan finance charge may not exceed that rate agreed to which is permitted by the Consumer Protection Code for that transaction. Although the agreed-to rate during the term of the transaction may be less than the maximum permitted, there is no authority in the Consumer Protection Code to increase the rate at maturity even if the increased rate would not exceed the maximum permissible rate for that transaction. Any increase after maturity would therefore be an unauthorized default charge.

Based on the foregoing, it is the opinion of this Department that a supervised lender and a consumer may agree that a charge will be made after the original maturity date of a transaction within the limitations of the Consumer Protection Code's provisions applicable to that transaction, including Section 3.405 on default charges, and that agreement will also determine the rate after judgment in accordance with the Turner Coleman decision. A charge after maturity greater than that permitted by the Consumer Protection Code provision on maximum charges applicable to that transaction as limited by Section 3.405 on default charges is an unauthorized default charge subject to action by the consumer and the Administrator.

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Administrator

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