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AND
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The State of South Carolina
Department of Consumer Affairs

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June 5, 1979

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Administrative Interpretation No. 3.508-7910

LICENSED SUPERVISED LENDER IS SUBJECT TO MAXIMUM SUPERVISED LOAN RATES AND CHARGES FOR FIRST MORTGAGE CONSUMER LOAN TO BUILD OR PURCHASE A RESIDENCE UNLESS LOAN IS EXCLUDED FROM CONSUMER PROTECTION CODE.

You have asked whether certain first mortgage loans made by a licensed supervised lender are subject to the Consumer Protection Code's provisions on rates and charges applicable to supervised loans. Your question concerned a first mortgage loan made to enable a debtor to build or purchase a residence.

As a licensed "supervised lender" [defined in CPC §3.501(2), S.C. Code Ann. §37-3-501 (Cum. Supp. 1978)], that lender is authorized to make "supervised loans" [as defined in CPC §3.501(1)] by virtue of its license issued by the Consumer Finance Division of the Board of Financial Institutions. CPC §3.502 S.C. Code Ann. §37-3-502 (Cum. Supp. 1978). A "supervised financial organization," the other type of lender authorized to make supervised loans under the Consumer Protection Code, is defined in Section 1.301(17), S.C. Code Ann. §37-1-301 (Cum. Supp. 1978), as:

...[A] person...

- (a) organized, chartered, or holding an authorization certificate under the laws of this State or of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate of deposit account...and
- (b) subject to supervision by an official or agency of South Carolina or of the United States. (Emphasis added)

Act 7 of 1979 as amended by Act 19 of 1979, effective February 8, 1979, and March 27, 1979, respectively, amended Section 1.202, S.C. Code Ann. §37-1-202 (Cum. Supp. 1978), the exclusionary section of the Consumer Protection Code, to read in part:

This title does not apply to:

....

- (11) First mortgage, loans made to enable the debtor to build or purchase a residence, when made by

TELEPHONES [AREA CODE 803]

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758-3017

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758-2040
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758-8587

CONSUMER ADVOCACY
758-5864

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... (Emphasis added)

At the same time the new exclusion in Subsection (11) of Section 1.202 was added, Act 7 of 1979 provided in Section 2 that:

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... (Emphasis added)

Administrative Interpretation No. 3.104-7908 issued May 10, 1979, stated that in general a first mortgage loan made to enable a consumer to build or purchase a residence falls within the amended definition of consumer loan. Unless such a loan made by a supervised lender is excluded from the Consumer Protection Code by Subsection (11) of Section 1.202, that loan is subject to provisions of the Consumer Protection Code relating to supervised loans including Section 3.508, S.C. Code Ann. §37-3-508 (Cum. Supp. 1978), prescribing maximum loan finance charges for certain supervised loans. Assuming the supervised lender is not a Federal Housing Administration approved mortgagee, the question is whether its "loans are subject to supervision by an agency of this State or of the United States" as provided in Subsection (11) of Section 1.202.

By using the phrase concerning supervision of loans, apparently the General Assembly intended to exclude first mortgage consumer loans to build or purchase a residence from the Consumer Protection Code only if those loans were already and would remain subject to supervision by a state or federal agency. That is, if those loans would be supervised by a governmental agency for purposes of the "supervised financial organization" definition quoted earlier, or an agency such as the Veterans Administration, no worthwhile purpose would be served by subjecting those first mortgage consumer loans to build or purchase a residence to additional regulation. However, for organizations whose only loans subject to governmental supervision are consumer loans, excluding first mortgage consumer loans to build or purchase a residence from the Consumer Protection Code would result in no supervision whatsoever for those loans, a result contrary to the intention of the legislature.

In our opinion, Subsection (11) of Section 1.202 can be read as if it said:

This title does not apply to:

....

- (11) First mortgage loans made to enable the debtor to build or purchase a residence, when made by

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a lender whose first mortgage loans made to enable the debtor to build or purchase a residence are subject to supervision by an agency of this State or of the United States or made by a Federal Housing Administration approved mortgagee... (Underlined language added)

Based on the foregoing it is the opinion of this Department that a licensed supervised lender who is neither a Federal Housing Administration approved mortgagee nor subject to governmental supervision of its first mortgage consumer loans to build or purchase a residence other than in connection with supervision of its consumer loans in general, is subject to the maximum rates and charges applicable to supervised loans when making a first mortgage loan to enable a consumer to build or purchase a residence.

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KGS:mc