



IRVIN D. PARKER  
ADMINISTRATOR  
AND  
CONSUMER ADVOCATE

# The State of South Carolina

## Department of Consumer Affairs

2221 DEVINE STREET  
P. O. BOX 5757  
COLUMBIA, S. C. 29250

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Administrative Interpretation No. 1.202-7903

"RESIDENCE" FOR PURPOSES OF EXCLUSION MEANS ANY REAL PROPERTY IN WHICH THE CONSUMER RESIDES OR EXPECTS TO RESIDE INCLUDING A VACANT LOT.

The Consumer Protection Code was amended effective February 8, 1979, by adding subsection (11) to §1.202, S.C. Code Ann. §37-1-202 (Cum. Supp. 1978), which reads as follows:

This Title does not apply to...

- (11) 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 lender who is deemed to be a supervised financial organization for purposes of Section (2). (Emphasis added.)

We have been asked how the term "residence" is defined in the exclusion. In our opinion "residence" for purposes of the exclusion has the same definition as it does in §226.2(ff) of Regulation Z, 12 C.F.R. §226, the implementing regulation of the federal Truth in Lending Act, 15 U.S.C. §1601 et seq., which reads as follows:

"Residence" means any real property in which the customer resides or expects to reside. The term includes a parcel of land on which the customer resides or expects to reside.

In construing a statute, the intent of the legislature is the primary guideline to be used. Adams v. Clarendon City School District #2, 270 S.C. 266, 241 S.E.2d 897 (1978).

The Consumer Protection Code itself defines residence in subsection (6) of §1.201, S.C. Code Ann. §37-1-201 (Cum. Supp. 1978), as follows:

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

For the purposes of this title, the residence of a consumer is the address given by him as his residence in a writing signed by him in connection with a credit transaction. Until he notifies the creditor of a new or different address, the given address is presumed to be unchanged.

That term is referred to in Consumer Protection Code §5.110, S.C. Code Ann. §37-5-110 (Cum. Supp. 1978), concerning notice of the consumer's right to cure. Subsection (1) provides in part that:

...A creditor gives notice to the consumer under this section when he delivers the notice to the consumer or mails the notice to him at his residence (subsection (6) of §1.201). (Emphasis added)

The Consumer Protection Code's definition of residence in §1.201 is apparently intended generally to provide the creditor with a method of determining whether a consumer is a resident of South Carolina for purposes of territorial application of the Code. Specifically the §1.201 definition provides for an address on which a creditor may rely for purposes of giving notice of the right to cure pursuant to §5.110. Thus residence as defined in §1.201 provides the location of the consumer for certain purposes.


On the other hand, subsection (11) of Consumer Protection Code §1.202 specifies certain loans excluded from the Consumer Protection Code that fall within the definition of consumer loan [§3.104, §37-3-104 (as amended by the Act of 1979 bearing ratification number R16)]. Residence in this context refers to real property the consumer will acquire as a result of the loan. It is reasonable to conclude that the General Assembly did not intend the definition of residence in §1.201(6) to apply to the exclusion because such an application does not conform to the purposes for which that definition was written. Instead, it is reasonable to conclude that the legislature intended to draw on the definition of residence in Regulation Z §226.2(ff) which is incorporated by reference into the Consumer Protection Code and is appropriate in the context of the exclusionary language. Consumer Protection Code §§1.102(2)(f), 1.302, 2.301, 3.301, and 6.104(2) and (3), [S.C. Code Ann. §§37-1-102, 37-1-302, 37-2-301, 37-3-301, and 37-6-104(1976) respectively] together require that the Consumer Protection Code be made to harmonize with the Truth in Lending Act and incorporate by reference that Act and Federal Reserve Board Regulation Z.

Most Federal Reserve Board public information letters concerning the term residence as used in Regulation Z have been written to clarify which consumer credit transactions are subject to the consumer's right to rescind. These letters make it clear that a residence may be an unimproved lot or tract of land as long as at the time the transaction is entered into the consumer intends or expects to reside there. E.g., FRB Letter No. 574 of February 10, 1972 and No. 186 of November 26, 1969.

The term residence in §1.202(11) is not limited to the primary residence of the consumer. Thus the term includes any real property in which the consumer resides or expects to reside such as a retirement or vacation home. The determining factor is the intention of the consumer at the time the transaction is entered into.

It is the opinion of this Department that the definition of "residence" for purposes of the exclusion in §1.202(11) is the same as Regulation Z §226.2(ff). A residence is any real property in which the consumer resides or expects to reside, including a vacant lot, and is not limited to the primary residence of a consumer.

Irvin D. Parker  
Administrator

By:   
Kathleen Goodpasture Smith  
Counsel to the Administrator

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