

The State of South Carolina

Department of Consumer Affairs

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Administrative Interpretation No. 3.104-8113

LOAN TO PURCHASE AND IMPROVE NON-OWNER OCCUPIED RENTAL PROPERTY IS NOT A CONSUMER LOAN.

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You asked for an interpretation of the word "personal" in the definition of consumer loan in two situations involving the acquisition and improvement of rental property. In your first question, an individual wishes to borrow money from a licensed supervised lender under circumstances which would apparently qualify for a consumer loan with the possible exception that he intends to use the proceeds to purchase, remodel and furnish residential property which he intends to rent. While the transaction has all the elements in paragraphs (a) (to an individual), (c) (payable in installments with a finance charge), and (d) (secured by an interest in land) of subsection (1) of Consumer Protection Code § 37-3-104 (1976 as amended) defining consumer loan, the question is whether "the debt is incurred primarily for a personal, family or household purpose" under § 37-3-104(1)(b).

Determining whether a transaction is primarily for a "personal, family or household purpose" is a key to knowing whether a transaction is governed by the Consumer Protection Code, but that term is not defined. Many transactions obviously meet the test such as a loan to obtain the family's car, washing machine, or television. In other cases, such as the one in your first question, it is not so clear. The definitions of consumer loan and consumer credit sale are based on the Uniform Consumer Credit Code ("UCCC") definitions of the same terms. 1968 UCCC §§ 2.104, 3.104. There is no official comment to the Official 1968 Text definition of consumer loan. The official comment to 1968 UCCC § 2.104 defining consumer credit sale, however, which is pertinent, says:

Since most of the operative provisions of this Act apply either to consumer credit sales, or to consumer loans, or to both, the definition of consumer credit sale is one of the key scope definitions of the Act. In defining a consumer credit sale as one made by a commercial seller to a buyer who is a natural person for an amount financed not exceeding \$25,000.00 (except in the case of land sales) for a personal, family [or] household... purpose, this Act applies to the same sales transactions as CCPA Sections 103(f) and (h), and 104(3) [15 U.S.C.A. §§ 1602(f), (h), 1603(3)].

Although the Truth in Lending Act has recently been amended by the Truth in Lending Simplification and Reform Act, Title VI of Public Law 96-221 [see A.I. No. 2.301-8107 of September 1, 1981], the concept of consumer credit trans-

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action for Truth in Lending disclosure purposes is substantially the same as before the amendments. "Consumer credit" under Truth in Lending Act § 103(h) [15 U.S.C. § 1602(h)] and revised Federal Reserve Board Regulation Z § 226.2 (a)(12) [12 C.F.R. § 226] is still defined as credit offered or extended to a consumer "primarily for personal, family, or household purposes." (Agricultural purpose credit is now excluded, as it has been by the Consumer Protection Code since its passage.) That language is the same in the old and new act and regulation but, as in the UCCC, it is not defined in any of them. Old and new Truth in Lending Act and Regulation Z also have an exemption for business or commercial transactions which complements the definition of consumer credit. TILA § 104(1) [15 U.S.C. § 1603], FRB Reg. Z § 226.3(a).

Neither the act nor the regulation defines business or commercial purposes, just as they do not define personal purposes. But the Official Staff Commentary to Regulation Z [TIL-1] provides guidance on what the Federal Reserve Board sees as business purpose versus consumer purpose transactions generally and in particular transactions relating to rental property. 46 Fed. Reg. 50288, 50297 (1981). In Paragraph 3 concerning revised Regulation Z § 226.3(a) on exempt business, commercial, agricultural, or organizational credit, the Federal Reserve Board says:

Credit extended to acquire, improve, or maintain rental property (regardless of the number of housing units) that is not owner-occupied is deemed to be for business purposes. This includes, for example, the acquisition of a warehouse that will be leased or a single-family house that will be rented to another person to live in. If the owner expects to occupy the property for more than 14 days during the coming year, the property cannot be considered non-owner-occupied and this special rule will not apply. For example, a beach house that the owner will occupy for a month in the coming summer and rent out the rest of the year is owner occupied and is not governed by this special rule. ...

If credit is extended to acquire, improve or maintain rental property that is or will be owner-occupied within the coming year, different rules apply:

Credit extended to acquire the rental property is deemed to be for business purposes if it contains more than 2 housing units.

Credit extended to improve or maintain the rental property is deemed to be for business purposes if it contains more than 4 housing units. ...

Section 37-1-102 (1976 as amended) tells us to liberally construe and apply the Consumer Protection Code to promote its underlying purposes and policies, two of which are found in subsection (2)(a) and (f):

To simplify, clarify and modernize the law governing retail installment sales, consumer credit and usury; [and]


To conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act. ... (Emphasis added).

In our opinion, adopting the Federal Reserve Board interpretation concerning when transactions involving acquisition, improvement or maintenance of rental property simplifies the law governing consumer credit transactions in South Carolina by harmonizing the Consumer Protection Code with and conforming the regulation of transactions to the policies of the Truth in Lending Act (which is part of the Federal Consumer Credit Protection Act). See also CPC § 37-6-104(3) (1976). Although we have no specific exclusion for business or commercial purpose transactions as do the federal law and regulation, business and commercial transactions are impliedly excluded because such transactions fall outside the definition of consumer credit transactions as being the converse of personal, family or household purpose transactions. See A.I. No. 3.601-8104 of May 19, 1981.

It is therefore the opinion of this Department that if a loan is made to a person to purchase, remodel and furnish residential property for rental purposes, it will not be a consumer loan if the person will not occupy the property. If the person plans to occupy the property within the coming year, a loan for acquisition may be a consumer loan only if the property contains two or less housing units. If the loan is for maintenance or improvement and the person plans to occupy it within the coming year, the loan may be a consumer loan only if the property contains four or less housing units. In either case in which the property will be owner-occupied, the fact that the property contains no more than two units (acquisition) or no more than four units (improvement or maintenance) does not necessarily make the loan a consumer loan. In those instances a case by case determination must be made based on various factors. See TIL-1 §226.3(a)-2 [46 Fed. Reg. 50297 (1981)].

Your final question concerned a loan to purchase, remodel and furnish commercial rental property. In our opinion, all such transactions would be excluded from the definition of consumer loan as not meeting the requirement of being primarily for a personal, family or household purpose.

Steven W. Hamm
Administrator


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