



# The State of South Carolina

## Department of Consumer Affairs

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November 25, 1983

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Administrative Interpretation No. 3.202-8303

THE CONSUMER PROTECTION CODE DOES NOT AUTHORIZE A "RELEASE FEE," ALTHOUGH CERTAIN EXPENSES INVOLVED IN RELEASING A PORTION OF REAL ESTATE THAT IS COLLATERAL FOR A CONSUMER LOAN MAY BE RECOUPED BY THE LENDER AS PERMISSIBLE ADDITIONAL CHARGES.

A supervised lender has asked whether a "release fee" can be charged in connection with real estate consumer loans. The loans involved are secured by tracts of land large enough to be subdivided. Occasionally, a debtor may approach the lender during the term of such a loan asking the lender to release a portion of the real estate which is collateral for the loan so that the debtor can sell that portion or use it for other purposes. The lender may determine that a sufficient amount of the loan has been repaid and the remaining portion of the real estate which would continue to secure the loan adequately secures the indebtedness. The lender wishes to charge a release fee in an amount of fifty to one hundred dollars to recoup the expenses in processing such a transaction.

Under the circumstances described, the charge would not be "imposed directly or indirectly by the lender as an incident to the extension of credit," and therefore such a charge would not be regarded as a loan finance charge under S. C. Code Ann. § 37-3-109 (Cum. Supp. 1982). Section 37-3-202 sets forth those charges which may be contracted for and received by lenders in addition to the loan finance charge in connection with consumer loans. No "release fee" as such is mentioned.

Nevertheless, Section 37-3-202 enumerates a number of permissible additional charges which might be applicable to such a transaction. For example, Section 37-3-202(1)(a) permits lenders to contract for and receive additional charges for official fees such as a fee for filing a new security instrument. Section 37-3-202(1)(d)(i) would permit the lender to receive the costs of a survey if a survey is necessary. Although subsection (d) mentions "closing costs" certain covered charges need not be directly related to the "closing" of the loan. For example, escrows under Section 37-3-202(1)(d)(iii) includes money paid at the time of closing and paid periodically thereafter. Certain other fees, such as document preparation [§ 37-3-202(1)(d)(ii)] and appraisal fees [§ 37-3-202(1)(d)(v)] may be assessed if those fees are not paid to the creditor or person related to the creditor.

Any other costs not enumerated in Section 37-3-202, such as the overall administrative expense in making such a change, would not be permissible for the release of a portion of the real estate just as such charges are not permissible for putting the original loan on the books.

TELEPHONES (AREA CODE 803)

CONSUMER COMPLAINTS

ADMINISTRATION  
758-3017

758-2040  
WATS 1-800-922-1594

PUBLIC INFORMATION  
758-7546

NOTIFICATION  
758-8587

CONSUMER ADVOCACY  
758-8996

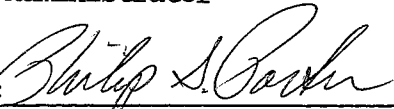
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In summary, it is the opinion of this Department that a separate charge for a "release fee" may not be assessed for releasing a portion of the real estate which is collateral for a consumer loan, although certain other charges specifically enumerated in Section 37-3-202 may be assessed as permissible additional charges.

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