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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. 3.501-7912

SUPERVISED LENDERS MAY MAKE NON-CONSUMER LOANS, INCLUDING FIRST MORTGAGE REAL ESTATE LOANS, AND SUCH LOANS ARE NOT GOVERNED BY CONSUMER PROTECTION CODE.

You have asked whether a supervised lender who has obtained a license to make supervised loans under the Consumer Protection Code pursuant to Section 3.503, S.C. Code Ann. §37-3-503 (Cum. Supp. 1978), may make certain non-consumer loans and if so, at what maximum rate of finance charge they may be made. In particular, you asked whether a licensed supervised lender could make a non-consumer loan secured by a first mortgage on a residence or other real estate.

The Consumer Protection Code, in general, governs consumer credit transactions, including "consumer loans" as defined by Section 3.104, S.C. Code Ann. §37-3-104 (Cum. Supp. 1978 as amended). Before a lender is authorized to make "supervised loans" as defined by Section 3.501, S.C. Code Ann. §37-3-501 (Cum. Supp. 1978), he must obtain a license from the Board of Financial Institutions authorizing him to make supervised loans unless he is a supervised financial organization. CPC §3.502, S.C. Code Ann. §37-3-502 (Cum. Supp. 1978). Although such a license authorizes a person to make supervised loans, it does not restrict that person to making only supervised loans or only consumer loans. Instead, the Consumer Protection Code requires a lender to obtain a license and be subject to more extensive supervision than unlicensed lenders including regular examination only if he desires authorization to make consumer loans with a rate of finance charge exceeding twelve percent (12%) per year annual percentage rate. The fact that a lender has such a license does not preclude that lender from making non-supervised consumer loans (consumer loans whose annual percentage rate of finance charge is twelve percent (12%) or less) or non-consumer loans. However, any non-consumer loans made at the same location where supervised loans are made must not be for the purpose of evasion or violation of the Consumer Protection Code. CPC §3.512(3), S.C. Code Ann. §37-3-512 (Cum. Supp. 1978).

A licensed supervised lender who makes non-consumer loans is subject to restrictions on rates and charges for those loans outside the Consumer Protection Code's limitations on rates and charges for consumer loans. Thus, a supervised lender would be permitted to make a non-consumer loan secured by a first mortgage on real estate at any rate of interest agreed to by the parties under the authority of Section 1 of Act No. 7 of 1979, regardless of the type of real estate or the classification of the security interest as either a purchase money or non-purchase money security interest, subject to the exceptions in Sections 3 and 4 of that Act.

TELEPHONES (AREA CODE 803)

ADMINISTRATION
758-3017

CONSUMER COMPLAINTS
758-2040

PUBLIC INFORMATION
758-7546

NOTIFICATION
758-8687

CONSUMER ADVOCACY
758-5864

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Additionally, you asked whether a supervised lender may use its supervised loan contract forms to make non-consumer loans. While there is no prohibition against using the same form for both consumer loans and non-consumer loans, care should be taken to assure that a borrower is not misled or confused concerning the classification of his loan. Consumer Protection Code Section 3.601, S.C. Code Ann. §37-3-601 (Cum. Supp. 1978), provides in part:

...[T]he parties to a loan other than a consumer loan may agree in a writing signed by the parties that the loan is subject to the provisions of this Title applying to consumer loans. If the parties so agree, the loan is a consumer loan for all purposes of this Title except for purposes of loan finance charges for supervised loans (§37-3-508) and supervised loans pursuant to a lender credit card (§37-3-515).

If the document constitutes a signed written agreement that the non-consumer loan is subject to the Consumer Protection Code, not only would it be subject to all applicable provisions of the Code, but it would be limited to a twelve percent (12%) annual percentage rate of finance charge allowed for non-supervised loans. If it were made clear that the loan was not subject to the Consumer Protection Code, but consumer loan forms were used, those provisions of the form giving additional protection to the borrower as if he were a consumer with rights under the Consumer Protection Code would become part of the agreement of the parties for that non-consumer loan.

Based on the foregoing, it is the opinion of this Department that a licensed supervised lender may make non-consumer loans secured by a first mortgage on real estate at any rate of finance charge agreeable to the parties under the authority of and subject to the exceptions in Act 7 of 1979. However, if a non-consumer loan is made using a supervised loan contract form, the loan may be made subject to the Consumer Protection Code and limited to a twelve percent (12%) annual percentage rate of finance charge unless it is made clear in the agreement that such a result is not intended.

Irvin D. Parker
Administrator


By

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