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AND
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Administrative Interpretation No. 1.108-7916

PARTIES TO A CONSUMER LOAN WHO AGREE TO CHARGES
AFTER MATURITY WITHIN LIMITS OF CONSUMER PROTECTION
CODE ALSO DETERMINE RATE APPLICABLE TO JUDGMENT.

You have asked whether a lender and a consumer may contract within legal limits for the payment of interest on a consumer loan after maturity of the loan and after the obligation has been reduced to judgment. Your question was prompted by the recent case Turner Coleman, Inc. v. Ohio Construction & Engineering, Inc., et al., S.C., 251 S.E.2d 738 (1979). That case found that because the parties to a transaction had agreed to a lawful rate of interest to be paid after maturity, that same rate would also apply to the judgment entered on the obligation. The Court held that South Carolina Code Section 34-31-20 setting the legal interest rate for judgments at six (6%) percent per annum [now eight and three-fourths (8-3/4%) percent per annum] applies only in the absence of a written agreement between the parties for a different rate of interest after maturity.

The parties to the agreement in the Turner Coleman case, both of whom were business entities, expressly agreed in writing that if the indebtedness were not paid at maturity, it would bear interest at the rate of twelve (12%) percent per annum. The Court stated:

It is well settled that the parties are at liberty to contract, within legal limits, relative to the interest to be paid on an obligation, including the rate of interest to be charged after maturity....

We find nothing in the language of the statute (Section 34-31-20) to indicate that it was intended to alter interest rates bargained for and agreed upon by the parties and thereby provide the incentive to users of credit to default on their obligations so as to take advantage of the lower statutory rate [of six (6%) percent per annum]. (emphasis added) Id. at 740.

The Consumer Protection Code governs the circumstances under which various charges may be made as well as the maximum rates and charges that may be agreed to in connection with consumer credit transactions. Consumer Protection Code Section 1.108(1), S.C. Code Ann. § 37-1-108 (Cum. Supp. 1978). South Carolina Code Section 34-31-20, as amended, sets the legal rate of interest including the interest rate for judgments in general in absence of a written agreement to a different, if legally permissible, rate.

TELEPHONES [AREA CODE 803]

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758-3017

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758-2040
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758-7548

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758-8587

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758-5864

Although the Turner Coleman case involved a non-consumer transaction, the reasoning of the Court applies to consumer as well as non-consumer transactions. However, in consumer credit transactions, as compared to transactions involving two business entities such as in Turner Coleman, the standards for finding that a charge after maturity and thus after judgment has been bargained for and agreed to are higher. The General Assembly has declared that it is the public policy of South Carolina that consumer contracts be readable and understandable. Concurrent Resolution dated June 27, 1979 (H.2215). Absent a clear, comprehensible provision in the written agreement, a court may be reluctant to find a "bargained for and agreed to" charge after maturity and therefore after judgment, especially if the contract rate would be greatly in excess of the legal rate.

It is the opinion of this Department that Turner Coleman applies to consumer loans with the result that the parties to a consumer loan may bargain for and agree to charges after maturity within the limits of the Consumer Protection Code for that transaction and, if they have done so, that agreement controls charges after judgment as well. But if the parties to a consumer credit transaction have not bargained for and agreed to a charge after maturity that is permitted by the Consumer Protection Code and the obligation is reduced to judgment, Section 34-31-20 sets the legal rate of interest.

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