Administrative Interpretation No. 2.605-7905

HOMEOWNER AND BUYER MAY CONTRACT FOR ANY CREDIT SERVICE CHARGE IN CONNECTION WITH CREDIT SALE OF EQUITY IN RESIDENCE SECURED BY SECOND MORTGAGE ON THAT RESIDENCE.

We have been asked what rate of interest a homeowner may contract for with respect to a credit sale of the equity in his or her residence, secured by a second mortgage on the residence.

Inasmuch as the debt does not arise out of a lender's payment or agreement to pay money to the debtor or to a third party on the debtor's behalf, the transaction is not a loan, so that the usury statutes and other lending laws are inapplicable. See, "Loan," S.C. Code Ann. §37-3-106 (1976).

Inasmuch as the homeowner-seller is not "a person who regularly engages as a seller in credit transactions of the same kind," the transaction is not a "Consumer Credit Sale." S.C. Code Ann. §37-2-104 (1976).

Thus, the transaction is a sale "other than a consumer credit sale" with respect to which "the parties may contract for the payment by the buyer of any credit service charge." S.C. Code Ann. §37-2-605 (1976).

It is the opinion of this office that a homeowner may sell the equity in his own residence on a deferred payment plan, secure the debt by a second mortgage on the residence, and, with respect to such debt, contract for any credit service charge (which includes interest).

By Irvin D. Parker
Administrator

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