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Department of Consumer Affairs

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Administrative Interpretation No. 2.605-7905

HOMEOWNER AND BUYER MAY CONTRACT FOR ANY CREDIT SERVICE
CHARGE IN CONNECTION WITH CREDIT SALE OF EQUITY IN RES-
IDENCE 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 
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