



The State of South Carolina

Department of Consumer Affairs

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October 11, 1983

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AND
CONSUMER ADVOCATE

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Administrative Interpretation No. 10.102(a)-8302

FORM FOR INDICATION OF BORROWER'S PREFERENCE FOR LEGAL COUNSEL AND INSURANCE AGENT MAY BE INCORPORATED INTO APPLICATION DOCUMENT BY USE OF A RUBBER STAMP OR MAY BE PROVIDED ON A SEPARATE SHEET.

The Department of Consumer Affairs has been asked whether a lender may avoid having the borrower's preference indication required by S. C. Code Ann. § 37-10-102(a) (1976, as amended) on the application form itself.

Section 37-10-102(a) provides, in pertinent part:

The creditor shall ascertain the preference of the borrower as to the legal counsel that shall be employed to represent the debtor in all matters of the transaction relating to the closing of the loan and the insurance agent to furnish required insurance in connection with the mortgage and shall comply with such preference and the loan application on the first page thereof shall contain such information as is necessary to ascertain these preferences of the borrower.

Certain lenders have preprinted application forms for mortgage loans and would be required to reprint a large number of application forms if the above section were read to strictly require that the preference be placed physically on the first page of the application. Other lenders use applications which comply with the requirements of buyers on the secondary market. For example, the Federal Home Loan Mortgage Corporation (Freddie Mac) requires a particular application form to be filled out and that form leaves no room for the borrower's preference checklist on the first or front page. Alteration of this form would likely damage that loan's marketability to Freddie Mac.

The primary rule of statutory construction is to ascertain and effectuate the legislative intent. Bankers Trust of South Carolina v. Bruce, 275 S. C. 35, 267 S.E.2d 424 (1980). While courts are to apply terms of a statute according to their literal meaning, courts will disregard the literal import of words if application of the literal meaning of the words would result in unjust or absurd consequences, or would defeat the plain legislative intent. Martin v. Ellisor, 266 S. C. 377, 223 S.E.2d 415 (1976); State ex rel. McLeod v. Montgomery, 244 S. C. 308, 136 S.E.2d 778 (1964)].

While South Carolina has no formal legislative history, the General Assembly has provided some guidance in S. C. Code Ann. § 37-1-102 (1976, as amended)

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

which reads in pertinent part:

- (1) This title shall be liberally construed and applied to promote its underlying purposes and policies.
- (2) The underlying purposes and policies of this title are:
 - (a) To simplify, clarify and modernize the law governing retail installment sales, consumer credit and usury.
 -
 - (c) To further consumer understanding of the terms of credit transactions and to foster competition among the suppliers of consumer credit so that consumers may obtain credit at reasonable costs;
 - (d) To protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;
 - (e) To permit and encourage the development of fair and economically sound consumer credit practices; . . .

Section 37-10-102(a) was taken largely from S. C. Code Ann. §§ 29-3-210 and 29-3-220 (1976) which provide a similar right to select an attorney and an insurance agent. The provision that these preferences should be expressed on the first page of the loan application, however, was added by Section 37-10-102(a) and the original Sections 29-3-210 and 29-3-220 were repealed by Section 57 of Act 385 of 1982.

This evidences no legislative intent to either make loan transactions in South Carolina unmarketable on the secondary market (which would make credit less available) or to bring these transactions into potential conflict with federal law. On the contrary, given the provisions of Section 37-1-102 and the Consumer Protection Code as a whole, it would appear that in enacting Section 37-10-102(a) the General Assembly had two main objectives: (1) to provide the borrower with the right to legal counsel of his choosing and to an insurance agent of his choosing if insurance is required by the lender, and (2) to make these rights known to the borrower (applicant) by a conspicuous disclosure and have the borrower make his preference known before he is inundated with other documents related to the transaction. By having the borrower affirmatively select an attorney or insurance agent, it becomes less likely that the borrower will ultimately acquiesce to the lender's choice of an attorney or agent for whom the borrower would have to pay, even though that attorney or agent might actually represent the interests of the lender.

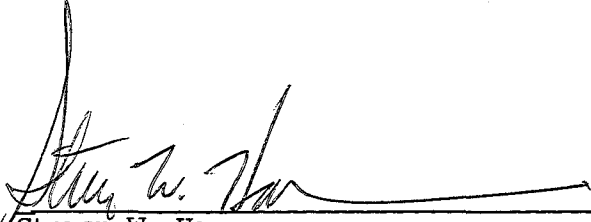
(b) Having been informed of this right, and having no preference, I asked for assistance from (the lender) and was referred to a list of qualified agents. From that list I select _____
Agent's Name

Borrower's Signature

Borrower's Signature

This form may be oversimplified for certain transactions, particularly if a number of insurance coverages are required. We believe, however, it can be lengthened within the same format.

In summary, the attorney and insurance agent preference need not be indicated directly on the application form so long as the borrower is presented a clear and conspicuous disclosure of this right prior to or contemporaneously with the application form. Use of the above form for these purposes will be deemed compliance with Section 37-10-102(a) by this Department if such form is filled out correctly.



Steven W. Hamm
Administrator