



# The State of South Carolina

## Department of Consumer Affairs

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EQUAL OPPORTUNITY EMPLOYER

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ADMINISTRATIVE INTERPRETATION 3.302-9401

NOVEMBER 2, 1994

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### THE CONSUMER PROTECTION CODE REQUIRES LENDERS TO DISCLOSE IN WRITING STATEMENTS OF ACCOUNT, INCLUDING PAY OFF AMOUNTS, WHEN DEBTORS REQUEST THEM IN WRITING IN CONNECTION WITH CONSUMER LOANS

It has come to the Department's attention that certain lenders and loan brokers claim to encounter difficulties in receiving timely pay off figures for purposes of refinancing consumer loan obligations. Fortunately, during the past two to three years interest rates and the cost of money have been relatively low when compared to other periods. Thus, it is feasible for lenders to refinance existing obligations, including consumer loan obligations, at lower rates. Because the Consumer Protection Code prohibits prepayment penalties, [S.C. Code Ann. §§ 37-3-209, -210 (1976, as amended)] the consumer can often benefit from a refinancing by lowering payments, by shortening the term or both.

A creditor holding an existing consumer loan obligation, however, may have less incentive to arrange a refinancing if it holds an obligation payable at rates higher than current market rates. In fact, it has been alleged that some lenders refuse to cooperate with such inquiries or engage in dilatory tactics.

Section 37-3-302(2) states:

Upon written request of a debtor, the person to whom an obligation is owed pursuant to a consumer loan, except one pursuant to a revolving loan account, shall provide a written statement of the dates and amounts of payments made within the 12 months preceding the month in which the request is received and the total amount unpaid as of the end of the period covered by the statement. The statement shall be provided without charge once during each year of the term of the obligation. If additional statements are requested the creditor may charge not in excess of \$2.00 for each additional statement.

The Department understands this provision to require lenders to provide pay off information to borrowers on request. Lenders may have legitimate concerns about releasing debtor's account information to unauthorized persons. Typically, however, the refinancing lender or broker will submit a verification of mortgage form with an authorization for this purpose, signed by the

TELEPHONE (AREA CODE 803)  
ADMINISTRATION  
734-9458  
ACCOUNTING  
734-9450

PUBLIC INFORMATION  
734-9462

CONSUMER COMPLAINTS  
734-9452  
WATTS 1-800-922-1594

INVESTIGATORS  
734-9461  
ENFORCEMENT  
734-9460

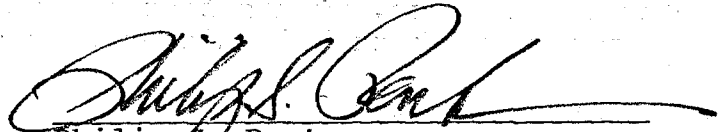
CONSUMER ADVOCACY  
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borrower. It is anticipated that lenders will have signatures on file for purposes of comparing signatures.

Allegations have been made that certain lenders refuse to submit pay off figures unless a borrower asks for it in person at the lender's place of business. Section 37-3-302(2) allows for no such procedures, and a lender runs the risk of violating that provision if it delays submission of the information until the borrower can arrange to come to the lender's address.

The Department is well aware that responses to these requests cannot be instantaneous. Moreover, the Department is aware that if the required response time were unreasonably short, the refinancing lender or broker could arrange to demand the information shortly before closing. This would prevent the original lender from saving the loan, perhaps with terms even more favorable to the consumer. Implicit in Section 37-3-302(2) is the notion that the lender will make reasonable efforts to respond within a reasonable time. While the Department will view these matters on a case by case basis, it is the view of the Department that lenders should ordinarily be able to respond within a calendar week to ten days.

If a lender is found to be unwilling or unable to respond in a reasonable time, the lender will be deemed by the Department to have violated Section 37-3-302(2). Further, in a proper case, if the Department is convinced that a lender has intentionally withheld information to prevent a refinancing, the Department will consider challenging such conduct as an attempted illegal prepayment penalty under S. C. Code Ann. §§ 37-3-209 and -210, or as an unconscionable debt collection practice under S. C. Code Ann. § 37-5-108.

  
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Affairs