



IRVIN D. PARKER
ADMINISTRATOR

The State of South Carolina
Department of Consumer Affairs

600 COLUMBIA BUILDING
P. O. BOX 11739
COLUMBIA, S. C. 29211
(803) 758-2040

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September 29, 1975

Administrative Interpretation No. 3.404-7510

ATTORNEY FEES CHARGEABLE TO DEFAULTING DEBTOR LIMITED
TO REASONABLE AMOUNT ACTUALLY INCURRED FOR BONA FIDE
LEGAL SERVICE, NOT TO EXCEED 15% OF DEBT AFTER DEFAULT.

You have asked whether Section 8-800.274, South Carolina Code of Laws (Section 3.404 of the UCCC) authorizes a collecting attorney to collect, as attorney fees, 15% off the top of remaining monthly instalments made by a debtor after default and reinstatement.

The Code does not purport to regulate fees which an attorney may charge for collections; neither as to amount nor method of payment. And it gives the attorney no right whatsoever against the debtor. The Code merely places limits upon the amount of such legal costs which a creditor may pass on to a defaulting debtor.

Accordingly, the Code neither authorizes nor prohibits an agreement between a creditor and an attorney wherein the creditor agrees to pay to the attorney 15% of the remaining contract instalments to be deducted from instalments as received. It does, however, prohibit the creditor from passing on such costs to the debtor except to the extent that:

- 1) The loan contract provides for attorney fees;
- 2) the fees are reasonable; and
- 3) the fees do not exceed "fifteen (15%) percent of the unpaid debt after default and referral to an attorney not a salaried employee of the lender". (Emphasis added).

"Unpaid debt after default" does not mean the "remaining contract instalments". It means the amount the creditor could legally collect if the debt were prepaid at the time of default.

Fifteen (15%) percent is a ceiling, not a rate. The fee in all events must be reasonable. What is reasonable is a fact question in each case. However, the question of reasonableness relates to actual legal services necessarily rendered in connection with collecting the debt or curing the default, as the case may be.

September 29, 1975

Page Two

One might reasonably question whether merely serving as a conduit for instalment payments after a reinstatement agreement has been reached is rendering a "legal" service for which the debtor may be charged; especially if the primary purpose of the arrangement is to aid the attorney in collecting his fees.

In summary, if the loan contract so provides, the lender could collect from the debtor in default, whether by suit or settlement, the amount reasonably incurred as legal expenses, not in excess of 15% of the debt which would have been due if prepaid at that time. He may not charge the debtor 15% of the remaining contract instalments in any event.



Irvin D. Parker
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