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AND
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The State of South Carolina

Department of Consumer Affairs

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August 3, 1979

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Administrative Interpretation No. 3.503-7914

SUPERVISED LOAN SECURED BY LAND MAY BE "CLOSED" AT A LAW OFFICE APART FROM THE LENDER'S PREMISES, WITH CERTAIN CLOSING COSTS BEING CHARGED TO BORROWER.

Section 37-3-503(7), of the S.C. Code of Laws of 1976 as amended requires that a supervised lender may "conduct the business of making supervised loans only at or from" a licensed office (emphasis added).

You have asked whether this subsection prohibits closing a supervised loan in a private law office away from the licensed loan office and pass on to the borrower the attorney fee charged by the attorney for closing the loan.

Pursuant to Rule 25 of the Administrator you state your opinion as follows:

Confusion exists because section 37-3.503 (7) states in part " ONLY AT OR FROM" any place business, etc. and some licensees having an attorney close the Loan elsewhere are relieving their own personnel of this duty, so they may devote their time used to close a Loan (usually 15 to 30 minutes) for other duties, such as soliciting new business, reports, etc.. The end result is that the borrower is being assessed an extra charge for the services of another person to perform the duties, which in our opinion, should be done by the supervised Licensee and included in the original finance charge.

Your question and answer read together suggest that you are posing two questions: 1) Does Section 37-3-503(7) prohibit "closing" a supervised loan in a law office away from the licensed lending office premises? 2) May a supervised lender charge as an additional charge (§37-3-202) closing costs in connection with a supervised loan?

Part 5 of Article 3 of the South Carolina Consumer Protection Code applies exclusively to supervised loans but Section 37-3-513 of that Part provides that "Except as otherwise provided, all provisions of this Title applying to consumer loans apply to supervised loans." Thus Section 37-3-202(1)(d) authorizing certain "closing costs" is applicable to supervised loans.

Closing costs which are enumerated in that subsection are permitted as an "additional charge" to the borrower if and only if:

TELEPHONES [AREA CODE 803]

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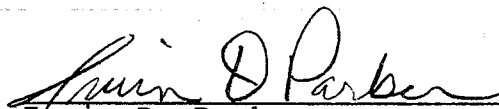
- 1) the loan is secured by an interest in land;
- 2) the costs are bona fide;
- 3) the costs are reasonable in amount; and
- 4) not for the purpose of circumvention or evasion of the Consumer Protection Code.

Note that the Section does not authorize an "attorney fee charged by the attorney for closing the loan" per se. It authorizes charges for specific services which may be rendered by attorneys in connection with closing a real estate loan. These are: 1) title examination, 2) title abstract, 3) preparation of a mortgage, settlement statement or other similar documents, and 4) notarizing loan documents, but items 3) and 4) are permissible only if these charges are not paid to the creditor or a person related to the creditor.

Inasmuch as these services are usually performed in offices other than the lending office, and inasmuch as charges for such services may be specifically authorized in connection with supervised loans secured by real estate, it would be unreasonable to conclude that the legislature intended to require that in the case of supervised loans an attorney would have to perform such "closing" services only at the licensed loan office or that such services must be performed only by staff personnel.

Based upon the foregoing it is the opinion of this office that in connection with a supervised loan which is secured by an interest in land the lender may employ an attorney at law to perform the loan closing functions enumerated in Section 37-3-202(1) at the attorney's office and make a reasonable charge to the borrower for such services which are bona fide and not for circumvention or evasion of the Code. This is subject to the exception stated above in the case of document preparation and notarization: if the attorney is a "person related to" the creditor as defined in Section 37-1-301(14), no additional charge may be made for those items. It is also subject to the further qualification that the consumer has the right to select the closing attorney under Section 8 of Act 7 of 1979. Such charges, however, if appropriate, should be itemized to show the precise service rendered and the charge made for each of the permissible services charged for, so that the loan examiners can ascertain whether the charge is in fact bona fide and reasonable and for one of the permissible closing services rather than merely administrative costs ordinarily incurred in making a loan.

In view of the question as asked it should be emphasized that the Code would not permit a lender to pass on to borrowers any and all "attorney fees charged by the attorney for closing," but permits only fees for services enumerated in Section 37-3-202(1)(d) in connection with loans secured by real estate to the extent that such fees are both bona fide and reasonable.


Irvin D. Parker
Administrator