



# The State of South Carolina

## Department of Consumer Affairs

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Administrative Interpretation No. 2.104-8112

SALE OF INTEREST IN LAND UNDER REGISTERED VACATION  
TIMESHARING OWNERSHIP PLAN IS EXCLUDED FROM CON-  
SUMER PROTECTION CODE WHEN SECURED BY PURCHASE  
MONEY FIRST MORTGAGE

You asked whether a sale under a duly registered vacation timesharing ownership plan would be excluded from the Consumer Protection Code in the following circumstances. The purchaser under such a plan obtains by deed an undivided interest in the common facilities of a condominium project together with fee title to a designated timesharing unit for a stated number of weeks over a period of years. He also obtains a remainder in fee simple as a tenant in common with all other purchasers of timesharing units under the plan. The purchaser gives the seller a note secured by a first lien mortgage which is a purchase money security interest in the deeded property.

For purposes of your question, you asked that we assume that the sale meets all the requirements of a "consumer credit sale" as defined in subsection (1) of Consumer Protection Code § 37-2-104 (1976). The purchaser obtains a recordable deed to the property purchased. He also gives the seller a note secured by a title insured first mortgage on the property purchased which is payable to the seller who is also the mortgagee. The seller will assign the note and mortgage to a state chartered bank. The condominium project is organized as a horizontal property regime with a master deed conveying an undivided interest in the common elements to the purchasers of timesharing units as members of the homeowners association.

Because the transactions meet the definition of consumer credit sale, the question is whether they are nonetheless excluded from the Consumer Protection Code under subsection (2) of § 37-2-104 (Cum. Supp. 1980), a non-uniform amendment, which provides in pertinent part:

Unless the sale is made subject to this title by agreement (§ 37-2-601), "consumer credit sale" does not include...

(b) A sale of an interest in land if the debt is primarily secured by a first lien which is a purchase money security interest in land.  
(Emphasis added)

Consumer Protection Code § 37-1-301(21) (Cum. Supp. 1980), also a non-uniform amendment, defines "purchase money security interest in land"

TELEPHONES (AREA CODE 803)

ADMINISTRATION  
758-3017

CONSUMER COMPLAINTS  
758-2040

PUBLIC INFORMATION  
758-7546

NOTIFICATION  
758-8587

CONSUMER ADVOCACY  
758-8996

WATS 1-800-922-1594

as a security interest "taken or retained by the seller of the land to secure all or part of its price." The security for the transaction is a first lien (first mortgage) on the property which is purchased. Although the definition refers to the "seller of the land," in our opinion that language may be read as if it said the "seller of an interest in land" because the definition relates to § 37-2-104 concerning "a sale of an interest in land." The ultimate question then is whether the sale is one of an "interest in land," a term which is not defined in the Consumer Protection Code.

Consumer Protection Code § 37-1-103 (1976) says that unless displaced by its provisions, principles of law and equity supplement the Consumer Protection Code. As you pointed out, the Statute of Frauds also refers to an "interest in land" in § 32-3-10 (1976) which says in part:

No action shall be brought whereby...

(4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them...

Unless the agreement... shall be in writing and signed by the party to be charged... . (Emphasis added)

The South Carolina Supreme Court has construed the term "interest in land" for purposes of that statute to mean the sale or transfer of some title or interest in land so as to confer upon the transferee some right of possession or ownership. *Carter v. McCall*, 193 S.C. 456, 8 S.E. 2d 844, 846 (1940). The term, according to the Supreme Court, does not include agreements which may affect land but which do not contemplate the transfer of any title, ownership or possession.

Additionally, the Horizontal Property Act, S.C. Code §§ 27-31-10 through 27-31-300 (1976), under which the plan is registered, defines "property" as "the land whether leasehold or in fee simple, the building, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto." (Emphasis added) § 27-31-20(k). Section 27-31-40 provides that once property is submitted to a horizontal property regime, an apartment (a part intended for independent use) may be individually conveyed and encumbered and may be the subject of ownership, possession or sale as if it were sole and entirely independent of other apartments with the corresponding individual titles and interests being recordable.

The plan is also registered as a "vacation time sharing ownership plan" which is defined as "any arrangement, plan or similar devise, whether by tenancy in common, sale, deed or by other means, which is subject to supplemental agreement or contract for use of the time share unit, whereby the purchaser receives an undivided ownership interest in and the right to use accommodations or facilities, or both, for a specific period of time during any given year, but not necessarily for consecutive years, which extends for a period of more than one year." (Emphasis added)

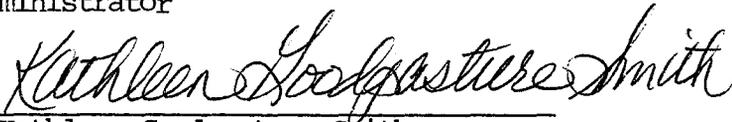
S.C. Code Ann. § 27-32-10(8) (Cum. Supp. 1980).

It is the opinion of this Department that a sale made under the described plan is a sale of an interest in land primarily secured by a first lien which is a purchase money security interest in land for purposes of exclusion from the Consumer Protection Code. The fact that the sale is subsequently assigned to a bank does not prevent the transaction from being classified as a sale subject to exclusion. Many transactions that we consider to be sales are subsequently assigned to a third party. For example, a sale of an automobile on credit by a dealer to a consumer is a consumer credit sale notwithstanding the fact that it is subsequently assigned to a separate financing agency. In such a case, the assignee stands in the shoes of the seller and the transaction is governed by the consumer credit sale provisions of the Consumer Protection Code. A.I. No. 2.102-7601 of February 11, 1976. Likewise, a bona fide credit sale other than a consumer credit sale may be made under the authority of Consumer Protection Code § 37-2-605 (1976) whether or not it is subsequently assigned to a third party. See D.R. No. 2.605-8001 Litchfield-by-the-Sea, Inc. of January 17, 1980. However, if a scheme were devised to set up sham sales merely to evade the usury or other lending laws which would otherwise apply, such transactions could not have the benefit of § 37-2-605 and its authorization for agreed-to finance charges of any amount.

In summary, in our opinion a sale under the described vacation timesharing ownership plan is excluded from the Consumer Protection Code by § 37-2-104 (2)(b) whether or not the sale is subsequently assigned to a state chartered bank. But the parties may bring the transaction under the Consumer Protection Code by agreement in accordance with § 37-2-601, and if they do so, it is subject to the Consumer Protection Code as if it were a consumer credit sale.

It should be noted that some timesharing plans do not involve a sale of an interest in land. Transactions under such plans are likely to be consumer credit sales. When it is not clear whether a transaction is excluded from the definition of consumer credit sale, the prudent course of action is to bring it under the Consumer Protection Code by agreement using § 37-2-601 to avoid potential problems of classification. See A.I. No. 3.601-8104 of May 19, 1981.

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Administrator

By   
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KGS/ses