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ADMINISTRATOR  
AND  
CONSUMER ADVOCATE

# The State of South Carolina

## Department of Consumer Affairs

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May 10, 1979

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Administrative Interpretation No. 3.201-7909

FIRST MORTGAGE PURCHASE MONEY CONDOMINIUM LOAN TO A CONSUMER IS SUBJECT TO TWELVE PERCENT ANNUAL PERCENTAGE RATE CEILING UNLESS MADE BY A SUPERVISED LENDER OR EXCLUDED FROM CONSUMER PROTECTION CODE.

You have asked whether a company may charge up to twelve percent annual percentage rate on first mortgage consumer loans made to enable a consumer to purchase a condominium without obtaining a license from the Board of Financial Institutions and without violating any provision of the usury law.

The company in question is regularly engaged in the business of making loans to enable a consumer to purchase a condominium. These loans, although for more than \$25,000.00, are secured by a first mortgage on the condominium and otherwise meet the definition of consumer loan [See Administrative Interpretation No. 3.104-7908 issued May 10, 1979]. For purposes of this Interpretation, we are assuming that such loans are not excluded by Consumer Protection Code §1.202 as amended by Acts Number 7 and 19 of 1979. Consumer Protection Code §1.108, S.C. Code Ann. §37-1-108 (Cum. Supp. 1978) provides in part in Subsection (1):

This title prescribes maximum charges for all creditors, except...those excluded (§37-1-202), extending consumer credit including...consumer loans (§37-3-104), and displaces existing limitations on the powers of those creditors based on maximum charges. (Emphasis added)

The maximum allowable charges for a consumer loan not excluded by Section 1.202 are prescribed by the Consumer Protection Code for that type of loan. Because the Consumer Protection Code exclusively governs maximum charges, the usury statutes have no application to a consumer loan not excluded from the Consumer Protection Code.

The company is not a supervised financial organization as defined by Consumer Protection Code §1.301(17), S.C. Code Ann. 37-1-301 (Cum. Supp. 1978), nor does it have a license to make supervised loans as defined by Consumer Protection Code §3.501(1), S.C. Code Ann. §37-3-501 (Cum. Supp. 1978), and thus is not authorized to make supervised loans by Consumer Protection Code §3.502, S.C. Code Ann. §37-3-502 (Cum. Supp. 1978) which provides in part:

TELEPHONES [AREA CODE 803]

ADMINISTRATION  
758-3017

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758-8587

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Unless a person is a supervised financial organization or has first obtained a license from the Board of [Financial Institutions] authorizing him to make supervised loans, he shall not engage in the business of

- (1) making supervised loans [consumer loans having a finance charge in excess of 12% annual percentage rate. CPC §3.501(1); S.C. Code Ann. §37-3-501 (Cum. Supp. 1978)]...

Consumer Protection Code §3.201, S.C. Code Ann. §37-3-201 (Cum. Supp. 1978) provides in Subsection (1):

With respect to a consumer loan other than a supervised loan (§37-3-501), a lender may contract in writing for and receive a loan finance charge, calculated according to the actuarial method, not exceeding twelve percent per year on the unpaid balances of the principal.

It is the opinion of this Department that a lender making first mortgage loans to consumers to enable a consumer to purchase a condominium is subject to the twelve percent annual percentage rate ceiling of Section 3.201 if those loans are not excluded from the Consumer Protection Code by Section 1.202 and that lender is not authorized to make supervised loans.

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