



Carri Grube Lybarker
Administrator

The State of South Carolina Department of Consumer Affairs

2221 DEVINE STREET, STE 200
PO BOX 5757
COLUMBIA, SC 29250-5757

Celebrating Over 35 Years of Public Service

September 12, 2014

Commissioners
David Campbell
Chair
Columbia
Johnny E. Sosebee
Vice Chair
Piedmont
Mark Hammond
Secretary of State
Columbia
Clifford Ray Keasler
Myrtle Beach
Terrell A. Parrish
Greer
Magaly P. Penn
Simpsonville
W. Fred Pennington, Jr.
Taylors

Via Hand Delivery and Electronic Mail



Administrative Interpretation 3.209-1401

RE: Opinion Request- Prepayment Penalties

Dear

You have requested an opinion regarding practices employed by supervised lenders when a loan is being prepaid by a third party on behalf of a consumer, the original debtor. Consumer credit transactions are governed by the South Carolina Consumer Protection Code (“the Code”), S.C. Code Ann. sections 37-1-101 *et seq.*¹ Right to prepay a consumer loan is addressed in § 37-3-209 with prepayment of credit sales addressed in § 37-2-209. From the information you have provided, the following question has been posed and will be addressed herein in the form of a general answer that could change depending on specific circumstances:

Can a lender subject to the Code charge a consumer a different interest rate than currently being assessed and impose different terms regarding accepted method of payment or otherwise impose varying contract terms when a consumer loan is being prepaid by a third party on behalf of the consumer?

As stated above, § 37-3-209 governs the consumer’s right to prepay a consumer loan. The section specifically states: “...the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at *any time without penalty.*” (Emphasis added.) A “debtor” is defined as “any person who is an obligor in a credit transaction, including any cosignor, comaker, guarantor, endorsee or surety, and *the assignee of any obligor,* and also includes *any person who agrees to assume the payment of a credit obligation.*” (Emphasis added.) See § 37-1-301(14). Lastly, “person” includes not only an individual, but an organization. See § 37-1-301(20). The right of a debtor to prepay a loan in full without penalty cannot be waived. See § 37-1-107(1).

¹ Further reference to the South Carolina Code of Laws will be by Code section only.

ADMINISTRATOR
803-734-4233
ACCOUNTING
803-734-4264
Fax: 803-734-4299

PUBLIC INFORMATION
803-734-4296
Fax: 803-734-4229

CONSUMER ADVOCACY
803-734-4200
Fax: 803-734-4287

ENFORCEMENT/
INVESTIGATORS
803-734-4236
Fax: 803-734-4287

CONSUMER COMPLAINTS
803-734-4200
Fax: 803-734-4286

E-Mail: SCDCA@SCCONSUMER.GOV
Website: WWW.CONSUMER.SC.GOV

Toll Free in SC: 800-922-1594
Voice/TT: 800-735-2905

The cardinal rule of statutory construction is to ascertain and effectuate the Legislature's intent from the plain language of the statute. Burns v. State Farm Mut. Auto Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Hitachi Data Svs. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843,846 (1992). Statutory provisions of the Code shall be liberally construed as well as applied to promote the Title's underlying purposes and policies. § 37-1-102(1); Davis v. NationsCredit Financial Services Corporation et al., 326 S.C. 83, 86, 484 S.E.2d 471,472 (1997). The primary purpose of the Code is to protect consumers, as evidenced within relief provisions contained therein. Camp v. Springs Mortgage Corp., 310 S.C. 514,516, 426 S.E.2d 304,305 (1993). Section 37-1-102 further delineates the purposes and policies of the Code, including to foster competition among suppliers, protect borrowers against unfair practices and encourage fair and economically sound consumer credit practices. See § 37-1-102(2)(c)-(e).

The plain language of the Code permits a debtor to prepay a loan in full without incurring any type of penalty. Further, debtor is defined broadly to not only include the original consumer who has promised or otherwise is obligated to pay the debt, but to assignees and other persons who agree to assume responsibility of paying the debt as well, including an organization.

In the scenario you provided, a third party is attempting to prepay a loan in full on behalf of the consumer. The Lender, however, contracted for alternate interest rate terms to apply should a third party, including but not limited to, a bank, credit union, title loan, automobile dealership or insurance company pay off the loan. In construing the statutory language of the Code liberally to effectuate its purposes and policies, the Department concludes such alternate terms would constitute a prepayment penalty if the third party is an assignee of the obligor or entered into an agreement to pay the loan. The third party assuming the obligation is considered the debtor and, thus, is entitled to pay off the loan under the same terms as the consumer whom originally incurred the debt/obligation. See § 37-1-301(14).

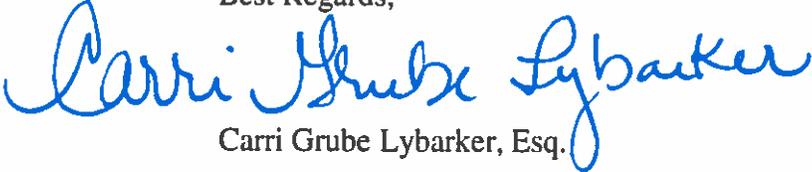
You have also posed a scenario whereby the Lender requires that the original debtor be present at the time the third party pays off the loan. As explained above, however, when the third party assumed the obligation, the third party is considered the debtor. If the Lender refuses to accept payment from the third party on the basis that the original debtor is not present, this amounts to a violation § 37-3-209 as the Lender is depriving the debtor of the right to prepay.

Lastly, you posed a scenario whereby the Lender refuses to accept the same type of payment method from a third party attempting to prepay a loan in full as it has previously contracted for or otherwise accepted from the original debtor. While this may not be considered a prepayment penalty, the practice could constitute breach of contract if the contract delineates the types of payment accepted or if the Lender has previously, through a course of dealings, accepted payment from the original debtor via the same method the third party is attempting to utilize. See § 37-3-103(3); Dowling v. Charleston & W.C. Ry. Co., 105 S.C. 475, 81 S.E. 313 (1913); Weisz Graphics Div. v. Peck Industries, 304 S.C. 101, 403 S.E.2d 146 (Ct. App. 1991).

When a debtor exercises the right to prepay pursuant to § 37-3-209, please also be mindful of other provisions of the Code governing prepayment. Section 37-3-210, for example, regulates prepayment rebates for consumer loans while § 37-4-108 states the parameters for the treatment of refunds of insurance premiums upon prepayment of a consumer loan.

Pursuant to sections 37-6-104(4) and 37-6-506(3), reliance upon an administrative interpretation provides protection from any penalties authorized by the Code if the administrative interpretation is subsequently declared invalid by a court or is rescinded. Please do not hesitate to contact me directly at 803-734-4297 should you need any further information.

Best Regards,


Carri Grube Lybarker, Esq.