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Celebrating Over 40 Years of Public Service

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Via Electronic and Interagency Mail

[redacted]

Administrative Interpretation 3.501,502-1501

RE: Opinion Request- Purchase/ Assignment of Supervised Loans

Dear [redacted]

You have requested an opinion regarding the sale/ assignment of supervised loans. Supervised loans are governed by the South Carolina Consumer Protection Code ("the Code"), Title 37, South Carolina Code of Laws[1], specifically §§ 37-3-500 *et seq.* From the information you have provided, the following questions have been posed and will be addressed herein in the form of a general answer that could change depending on specific circumstances:

i. Does the status of a purchased loan as defaulted, returned, unpaid or otherwise uncollectable affect whether the loan constitutes a "supervised loan" under the Code?
ii. Is a person purchasing or otherwise taking assignment of supervised loans from a licensed supervised lender or supervised financial organization required to hold a supervised lender license?
iii. Does the sale/ assignment of supervised loans impact the statute of limitations?

As stated above, the Code applies to supervised loans. A supervised loan is defined as a consumer loan with a finance charge exceeding twelve percent per year. *See* § 37-3-501(1). The Code also governs the regulation of persons offering and/or providing supervised loans to South Carolina consumers. Specifically, § 37-3-502 prohibits any person other than a supervised financial organization from engaging in the making of supervised loans or "taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from supervised loans" without first obtaining a license to do so[2]. *See* § 37-3-502(1)-(2).

[1] Further reference to the South Carolina Code of Laws will be by Code section only.
[2] Restricted lenders are exempted from this requirement pursuant to § 37-3-500.

Section 37-3-501(2) defines a "supervised lender" as "a person authorized to make or take assignments of supervised loans."

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). Further, the statute must be read as a whole and given a "practical, reasonable and fair interpretation consonant with the purpose, design and policy of lawmakers." Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 368, 20 S.E.2d 813, 815-816 (1942). Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction. Higgins v. State, 307 S.C. 446, 415 S.E.2d 799 (1992).

The plain language of the Code makes clear that persons who wish to take assignment of a supervised loan and either engage in collection of the debt or otherwise enforce rights against the debtor must obtain a license from the Board of Financial Institutions prior to doing so. An assignment is an "absolute, unconditional, and completed transfer of all right, title, and interest in the property that is the subject of the assignment . . . " Allianz Life Ins. Co. of N. Am. v. Riedl, 264 Ga. 395, 444 S.E.2d 736 (1994). When assignment is involved in a contractual matter, South Carolina case law provides that the assignee "stands in the shoes of the assignor". Twelfth RMA Partners, LP, v. Nat'l Safe Corp., et al., 335 S.C. 635, 639-640, 518 S.E.2d 44, 46 (1999) (Quoting Singletary v. Aetna Cas. & Sur. Co., 316 S.C. 199, 201, 447 S.E.2d 869, 870 (Ct. App. 1994)).

In the scenario you provided, there has been an absolute transfer of notes constituting consumer loans with finance charges in excess of twelve percent per annum. The absolute transfer gives the transferee the same rights the transferor had under the instrument that is transferred. *See* § 36-3-203. Neither these rights nor the status of the loan as a supervised loan are affected by the loan being in default or otherwise deemed uncollectible. All that is required for the triggering of the license requirement is the loan meets the definition of a supervised loan and the purchaser/ assignee will be engaging in activities delineated in § 37-3-502(1)-(2). Both apply in this matter[3].

As mentioned above, supervised financial organizations are permitted to make and take assignment of supervised loans in the absence of the required license. *See* § 37-3-502. Persons not meeting the definition of a supervised financial organization found in § 37-1-301(27), however, cannot avail themselves of the licensing exemption merely due to a purchase/ assignment from an exempt party. The loans entered into by the supervised financial

[3] You also mentioned the debt buyer may contract with a third party debt collector solely for assistance in the collection of payments due under the assigned supervised loan contracts. This relationship would not impact the debt buyer's need to obtain a license. Further, the debt collector would not constitute a supervised lender as described in § 37-3-501(2) and § 37-3-502(1)-(2).

organization still constitute supervised loans and the law clearly provides for licensure when collection/ enforcement activities that arise from a supervised loan are taken by a non-exempt party. *See* §§ 37-3-501(2); 37-3-502.

The last question posed pertains to the statute of limitations. Pursuant to §15-3-530, an action upon a contract shall be brought in court within three years. The statute of limitations begins to run when the party, in this scenario, the lender, has the right to bring an action against the debtor. *See* Brown v. Finger, 240 S.C. 102, 124 S.E.2d 781 (1962); Walter J. Klein Co. v. Kneece, 239 S.C. 478, 123 S.E.2d 870 (1962). When looking at a right of action held by the lender, the tolling of the statute of limitations would occur through a voluntary action of the debtor, not the lender. *See* Zaks v. Elliott, 106 F.2d 425, 427 (4th Cir. 1939) (Court found no evidence of debtor's intent to acknowledge or admit the debt was due, thus the statute of limitations was not tolled.); s*ee also* Wolfe v. Brannon, 211 S.C. 282, 44 S.E.2d 833 (1944) (Court found husband's payment of joint debt incurred with wife did not, as a matter of law, toll the statute of limitations with regard to both husband and wife.) Thus, the sale/ assignment of a supervised loan does not affect the statute of limitations since it is not an action taken by the debtor.

In summary, a person purchasing or otherwise taking assignment of a supervised loan, including loans with a charged off or otherwise "uncollectible status," must either be a supervised financial organization or a licensed supervised lender. This purchase/ assignment does not toll the statute of limitations. I hope this fully answers your questions. Please do not hesitate to contact me directly at 803-734-4233 should you need any further information.

Best Regards,

Carri Grube Lybarker

Carri Grube Lybarker, Esq.