



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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July 12, 1982 No. 82-13

Mr. A. Branton Kotch
Attorney at Law
9 Greenway Plaza East, Suite 1717
Houston, Texas 77046

Dear Mr. Kotch:

This is to acknowledge receipt of your letter dated June 17, 1982 concerning the applicability of Chapter 5, Article 5069, V.T.C.S. to a type of business practice conducted by one of your clients.

In your letter you state that a corporation owns and maintains an inventory of residential properties, sells them as the market allows, and in connection with some sales retains a secondary mortgage on the property as security for payment of a portion of the purchase price. You then ask:

"(1) What is the maximum rate of interest that it can charge on that second mortgage money, absent any license?

"(2) Must it obtain any such license?"

In our Letter Interpretation No. 82-12 dated June 30, 1982 we expressed our views concerning somewhat related questions.

Article 5069-5.01(3) provides as follows:

"The provisions of this Chapter shall not apply to any seller of property who makes a secondary mortgage loan to secure all or part of the unpaid purchase price."

Since the enactment of Chapter 5 in 1967 this Office has taken the position that the above quoted Article 5.01(3) precludes the applicability of Chapter 5 to sellers of property who retain a secondary mortgage on the property sold. Our position has been that sellers in such situations were not subject to the various restrictive provisions of that Chapter nor could they charge the rates authorized by Chapter 5.

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However, H.B. 1228, which became effective May 8, 1981, contained the provision set out below which is now codified as Article 5069-1.04(n)(2).

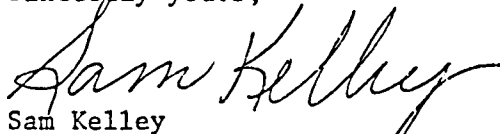
"Any loan made under this Article that is extended primarily for personal, family, or household use but not for business, commercial, investment, agricultural, or other similar purposes, and that is payable in consecutive monthly installments and is described by Section (1), Article 5.01, of this Title and that is made by a person engaged in the business of making those types of loans, is subject to Chapter 5 of this Title, and any person except a bank or savings and loan association engaged in that business shall obtain a license under Chapter 3 of this Title."

As can be seen this section makes no reference to Article 5.01(3) and does not exclude sellers of property from its applicability. It makes reference only to the type of transaction described in Article 5.01(1), and provides that if such a loan also meets the criteria of Article 1.04(n)(2) and is made by a person engaged in the business of making such loans then that person must have a Chapter 3 license.

In Letter Interpretation No. 81-14 dated August 19, 1981 we expressed our view that subsequent to May 8, 1981 a person could still engage in the business of making loans at an interest rate of 10% per annum or less and not be required to have a license from this Office. It is my opinion that such reasoning is applicable to a person engaged in the business of making loans covered by Article 1.04(n)(2).

It is our opinion that your client may engage in the earlier described activity and not be required to obtain a license from this Office as long as the interest charged on the loan transactions is 10% per annum or less. If your client wishes to charge an interest rate in excess of 10% per annum as is authorized by Article 1.04 on transactions which fall within the purview of Article 1.04(n)(2) then your client would be required to obtain a license as required by that Article.

Sincerely yours,


Sam Kelley
Consumer Credit Commissioner