



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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August 17, 1982 82-19

Mr. Ira Lee Allen
Allen Knuths & Cassell
Attorneys and Counselors at Law
932 Dallas Federal Savings Tower
8333 Douglas Avenue
Dallas, Texas 75225

Dear Mr. Allen:

This is to acknowledge receipt of your letter dated July 28, 1982 concerning Chapter 5, Article 5069, V.T.C.S. and Article 1.04 (n)(2), Article 5069.

In the first portion of your letter you point out that Article 5.01(3) provides that Chapter 5 shall not apply to sellers of property. You also note that Article 1.04(n)(2) makes Chapter 5 applicable to those who are engaged in the business of making loans which meet the criteria of Chapter 5. As you mention, in our Letter Interpretations Nos. 82-12 and 82-13 are set out the views of this Office concerning some aspects of this general area. You may consider the statements made in those letters as a portion of this response to you insofar as they are relevant to the issues you presented. You then set out four specific questions which I will quote as well as one other paragraph as set out in your letter and give my response immediately following each quoted question. Your letter reads as follows:

"Our questions involve: (i) the interest rates which may be charged on secondary mortgage loans of less than \$250,000 (ii) by sellers who are not in the business of making secondary mortgage loans described in Article 5.01(2) and (iii) by certain purchasers from those sellers. It is assumed that the owner/seller of property is not in the business of making second lien loans." (Emphasis mine)

"1. If the owner of property, either one who resides on the property or one who holds the property as an investment, sells the property, either to a person who plans to occupy the property as a home, or one who is purchasing the property for investment, may the seller charge interest on the loan at a rate which does not exceed the rates of Article 1.04(a), subject to the maximum on loans provided by Article 1.04(b)(1).

Response: Yes.

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"2. If the seller in a described loan may charge a rate of interest in excess of 10% per annum, but within the Article 1.04 limits, may someone who is licensed under Chapter 3 purchase such a loan from a seller and continue to charge the rate of interest provided in the loan documents."

Response: Yes.

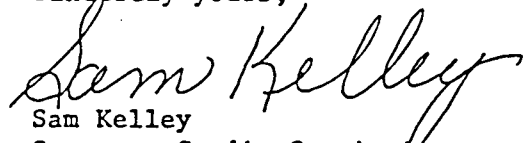
"3. May a licensee under Chapter 3 who purchases a secondary mortgage loan from the assignee of a seller continue to charge the rate of interest contracted for by the seller, in excess of ten percent but within the Article 1.04 limits, where such assignee of the Seller was not a bank, savings and loan association or Chapter 3 licensee? We are not asking for a ruling or opinion on the status of the assignee of the Seller by reason of Article 5.01(1)(b) but only the status of the interest rate when the loan is purchased by a permitted entity or licensee described in Article 5.01(2)."

Response: Yes.

"4. In the second and third examples above, are your answers any different if the purchase of the debt contemplates a renewal, extension or modification of a second lien originally made by a seller but renewed and extended at the time of and immediately prior to the purchase of the debt and second lien by a Chapter 3 licensee?"

Response: My answer is not any different.

Sincerely yours,


Sam Kelley
Consumer Credit Commissioner

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