



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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August 30, 1982 82-20

Mr. Hugh K. Higgins, Jr.
President
Home Capital Funds, Inc.
P. O. Box 9963
Austin, Texas 78766

Dear Mr. Higgins:

In our Letter Interpretation No. 81-33 dated December 29, 1981 directed to you I stated the position of this office with regard to the treatment of "buydown" funds received by a lender in connection with a transaction made pursuant to Article 5069-Chapter 5, V.T.C.S. Since the writing of that letter we have modified our position somewhat on that question. The purpose of this letter is to advise you and others that this modified position was published in the August 17, 1982 issue of the Texas Register (Volume 7, Number 61, page 3043). Set out below is a statement of our position with regard to "buydown" funds as it appears in the above mentioned edition of the Texas Register.

"(33) "Buydown" funds in Chapter 5 transactions. In some Chapter 5 transactions a seller, a buyer (borrower), or a third party (typically, the buyer's parents) may pay an amount to the lender in order to reduce the buyer's monthly payments on the loan for a portion of the term. Normally, the "buydown" funds are placed in an escrow account, sometimes but not always held by the lender. For a specified period monthly withdrawals are made from the account to supplement the buyer/borrower's monthly payments.

"Since Chapter 5 provides that the lender may not contract for, charge, or receive any charges other than interest and the other charges specified, if a lender receives any type of "buydown" funds they must be considered as a portion of the interest received in connection with the loan.

"If the "buydown" funds are paid by the buyer/borrower or a third party (such as a parent) on his/her behalf, they should be treated as prepaid interest even though placed in an escrow account.

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"If the "buydown" funds are paid by the seller to a lender which is also a depository and the lender places the funds among its deposits, even if in an escrow account, the buydown funds should be treated as prepaid interest.

"If the "buydown" funds are paid by the seller to a lender which is not a depository and the funds are placed in an escrow account with a third party, unrelated institution, and the lender does not have use of the buydown funds nor receive any benefit therefrom except to receive the regular monthly disbursements as part of the monthly payments on the loan, the buydown funds are interest as received monthly and need not be considered prepaid. (Letter Interpretations 81-33, although this interpretation differs in some respects from the letter)."

Sincerely yours,


Sam Kelley

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