



STATE OF TEXAS

# OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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September 22, 1982 82-22

Ms. Jackie Akins  
Walsh, Squires & Tompkins  
4200 Westheimer, Suite 130  
Houston, Texas 77027

Dear Ms. Akins:

This is to acknowledge receipt of your letter dated September 8, 1982 concerning prepayment penalties for residential mortgage loans in Texas. (All statutory references in this response are to various provisions of Article 5069, V.T.C.S.)

Prior to the Legislative Session in 1979, the maximum allowable interest rate which could be charged on a first mortgage residential home loan in Texas was limited to 10% per annum by Article 1.04 (as it existed at that time). In the above mentioned year the 66th Texas Legislature enacted Article 1.07(d) which provided for an interest rate of up to 12% per annum on such loans (dwelling units for four families or less). Article 1.07(d) was effective for only a short time before the U. S. Congress preempted state usury ceilings on first lien residential loans. Article 1.07(d) has not been repealed but its Section (d)(3) provides that the interest rates authorized by Article 1.07(d) shall not be applicable to any loan made on or after September 1, 1981. Because of the federal preemption shortly after the enactment of Article 1.07(d) there were not a large number of loans made pursuant to its provisions and of course it could not be utilized after September 1, 1981. However, it has not been repealed, is still a valid statutory provision, and presumably is applicable to some number of loans made pursuant to its provisions.

In enacting Article 1.07(d) the Legislature included a Section (d)(4) which provides as follows:

"(4) No prepayment charge or penalty may be collected on any loan transaction of the class defined in Subsection (d)(1) bearing a rate of interest in excess of that authorized by Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, except where such collection is required by an agency created by federal law."

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At the time of the passage of Article 1.07(d) the interest rate allowed by Article 1.04 was 10% per annum. I believe it is accurate to state that in enacting Article 1.07(d) the Legislature wanted to allow the interest rate on home loans to go as high as 12% per annum but to disallow any prepayment penalty on such a loan if the rate exceeded 10% per annum. The 10% limitation in Article 1.04 was of course increased by the 67th Legislature in 1981 by enactment of House Bill 1228.

One of the sections of H.B 1228 added a new section (f) to Article 1.07. That provision is as follows:

"(f) Notwithstanding the provisions of this Article relating to the date of expiration of authority to charge certain rates of interest, as an alternative to the rates of interest provided for by this Article, any person may agree to pay, and may pay pursuant to such an agreement, any rate of interest that does not exceed a rate authorized by Article 1.04 of this Title. If a loan for property that is to be the residential homestead of the borrower is made at a rate of interest that is greater than the rate prescribed by Subsection (d) of this Article, a prepayment charge or penalty may not be collected on the loan unless the charge or penalty is required by an agency created by federal law."

As can be seen, the last sentence of (f) precludes a prepayment charge or penalty on a loan on property that is to be the residential homestead of the borrower if the rate of interest on the loan is greater than that prescribed by Article 1.07(d), which is of course 12%. Since Article 1.07(d) has not been repealed and still has some measure of applicability, and since some effect must be given to the enactment of 1.07(f), it is our position that no prepayment penalty should be charged on a residential homestead loan if the interest rate on such loan exceeds 12% per annum. I would point out that the prepayment penalty prohibition in the current 1.07(f) is limited to loans on the borrower's residential homestead while the old prohibition in 1.07(d) was applicable to a broader range of real estate loans.

Sincerely,

  
Sam Kelley  
Consumer Credit Commissioner

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