



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

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September 19, 1986 86-4

Ms. Anne Chang
Vice President
Texas American Bank, Galleria NA
Post Office Box 2529
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Dear Ms. Chang:

This is to acknowledge receipt of your letter dated August 6, 1986, in which you ask us to state the position of this Office with regard to questions concerning refunds of unearned interest on precomputed loans made under the provisions of Article 5069, Vernon's Texas Civil Statutes-Chapter 5 and which were made prior to August 26, 1985.

Art. 5069-5.02(4), the applicable law in effect prior to August 26, 1985, provided in pertinent part:

"(4) When any loan contract is prepaid in full by cash, a new loan, renewal, or otherwise, or when the lender demands payment in full of the unpaid balance, after the first installment due date but before the final installment due date, the lender shall refund or credit the borrower with an amount which shall be as great a proportion of the total interest contracted for under Section (1) of this Article as the sum of the periodic balances scheduled to follow the installment date after the date of prepayment in full or demand for payment in full bears to the sum of all the periodic time balances under the schedule of payments set out in the loan contract. . . ."

Art. 5.02(4) as above written was repealed effective August 26, 1985, and was succeeded by Art. 5.02(6)(i) and Art. 5.02(6)(ii), which read in pertinent part as follows:

"(6)(i) When any loan contract payable in not more than sixty substantially equal successive monthly installments beginning within one month plus fifteen days after the date of the contract and containing precomputed interest is prepaid in full by cash, a new loan,



renewal, or otherwise, or when the lender demands payment in full of the unpaid balance, after the first installment due date but before the final installment due date, the lender shall refund or credit the borrower with an amount which shall be as great a proportion of the total interest contracted for under Section (1) of this Article as the sum of the periodic balances scheduled to follow the installment date after the date of prepayment in full or demand for payment in full bears to the sum of all the periodic time balances under the schedule of payments set out in the loan contract. . . ."

"(ii) When any loan contract which includes precomputed interest and is payable in more than sixty substantially equal successive monthly installments beginning within one month plus fifteen days after the date of the contract is prepaid in full by cash, a new loan, renewal, or otherwise, or if the lender demands payment in full of the unpaid balance before the final installment due date, the lender shall retain earned interest for the period from the date of the loan to the date of prepayment in full or demand for payment in full in an amount not to exceed that which would accrue at the simple annual interest rate which the loan contract would have produced over its full term if each scheduled payment had been paid on the date due when applied to the unpaid principal amounts determined to be outstanding from time to time according to the schedule of payments having due regard for the amount of each scheduled installment and the time of each scheduled installment period. . . ."

As can be seen from a reading of the above-quoted revision of Chapter 5, a lender is now required to compute the refund of unearned interest actuarially on precomputed loans payable in more than sixty substantially equal successive monthly installments.

You have requested our opinion as to how you should currently calculate the refund of unearned interest on precomputed secondary mortgage loans made under the authority of Art. 5069-Chapter 5 prior to August 26, 1985.

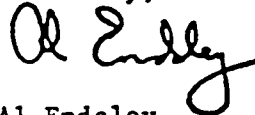
In Interpretative Letter No. 81-30 of December 8, 1981 to Mr. William T. Deane, the position of this Office was stated in regard to the prospective or retrospective application of laws as they generally affect existing contracts. A copy of Letter No. 81-30 is enclosed herewith and I consider it a part of this response to your question. As was expressed and cited in Letter No. 81-30, there are a number of Texas court decisions establishing the general theory that the law in effect at the time of making a contract is applicable to the provisions of that contract. I might add that Article 1, Section 16 of the Texas Constitution prohibits the making of retroactive laws affecting existing, vested rights arising out of a contract. The Texas courts, accordingly, in the absence of clear indication from the terms of the statute or equally clear indication of legislative intent to the contrary, have not favored the retroactive application of a statute to existing contracts.

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It is my position that there is no evident statutory indication that Art. 5069-5.02(6)(ii) should apply to contracts entered into prior to August 26, 1985, the date of its enactment. Accordingly, you may rely upon the law in effect at the time the loan in question was made, namely Article 5069-5.02(4), and compute unearned interest as therein provided unless the loan contracts provide for a different formula which is more advantageous to the debtor.

Sincerely,



Al Endsley
Commissioner

Enclosure