

1979 WL 42770 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 22, 1979

\*1 Ms. Elizabeth M. Wolff  
Executive Vice President  
South Carolina Association of REALTORS  
P.O. Box 21827  
Columbia, S.C. 29221

Dear Ms. Wolff:

You have asked what rate of interest a homeowner may contract for with respect to a credit sale of the equity in his or her residence, secured by a second mortgage on the residence.

Inasmuch as the debt does not arise out of a lender's payment or agreement to pay money to the debtor or to a third party on the debtor's behalf, the transaction is not a loan, so that the usury statutes and other lending laws are inapplicable. See 'Loan,' [Section 37-3-106, S.C. Code](#) of Laws (1976).

Inasmuch as the homeowner-seller is not 'a person who regularly engages as a seller in credit transactions of the same kind,' the transaction is not a 'Consumer Credit Sale' (Section 37-2-104).

Thus, the transaction is a sale 'other than a consumer credit sale' with respect to which 'the parties may contract for the payment by the buyer of any credit service charge.' (Section 37-2-605).

It is the opinion of this office that a homeowner may sell the equity in his own residence on a deferred payment plan, secure the debt by a second mortgage on the residence, and, with respect to such debt, contract for any credit service charge (which includes interest).

Sincerely,

Irvin D. Parker  
Administrator

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