

1980 WL 121100 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 18, 1980

***1 RE: Your letter of February 21, 1980**

Lewis M. Levy
Staff Counsel
S.C. State Housing Authority
2221 Devine Street
Suite 540
Columbia, South Carolina 29205

Dear Mr. Levy:

You have asked the opinion of this Office as to whether a 'legal review fee' is a permissible charge to be assessed against the seller in the Authority's Single Mortgage Purchase Program (1979-Series B) by a lending institution which is processing one of your loans. It is understood that the 'legal review fee' is being charged in addition to the permissible discount fee of 2%. It is further understood that the attorney to whom this fee is being paid is an officer of the lending institution, but that fact is totally irrelevant to the conclusion that we have reached.

It is the opinion of this Office that the South Carolina State Housing Authority's Single Family Mortgage Purchase Program's Procedural Guide for Series B, § 4.8 (page 22) is completely dispositive of this matter. A plain reading of Procedural Guide § 4.8 leads inescapably to the conclusion that the total amount in dollars for which a seller is liable to any lender may not exceed 2% of the principal amount of each mortgage loan. If this 'legal review fee' is being paid by the lender from the dollars that the lender collects by charging his seller a 2% fee, there would be no prohibition against it. If the 'legal review fee' causes the dollar amounts charged to the seller by the lender to exceed 2% of the principal amount of the mortgage loan, then such excess is not permissible.

As stated above, the attorney to whom the 'legal review fee' is being paid is irrelevant to this decision. The sole determinate is whether the aggregate dollars charged a seller exceed 2% of the principal amount of the mortgage loan. We shall be happy to discuss this opinion with you, your staff, or anyone else with an interest therein.

Sincerely yours,

William P. Simpson
State Attorney

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