

1980 WL 121148 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 7, 1980

**\*1 RE: Supervised Lender**

D. Nathan Davis, Esquire  
Suite 406  
1136 Washington Street  
Columbia, South Carolina 29201

Dear Mr. Davis:

In your letter of February 22, 1980, you requested an opinion from this office with regard to whether your client, a resort developer, would be required to register with either the Board of Financial Institutions or the Department of Consumer Affairs. It is my understanding that you have been advised by both of these agencies that such registration would not be required.

According to your letter, your client is a resort developer

'who builds and then sells resort properties to individuals. The developer takes a first mortgage on the property of up to ninety (90%) percent of the sales price and then subsequently resells these notes to a purchaser. The loans have a principal balance exceeding \$25,000.00 and an annual interest rate which exceeds twelve (12%) percent per annum.'

[Section 37-6-202 of the Code](#) requires persons in this State engaged in the making of consumer credit sales, consumer leases, or consumer loans to notify the Administrator of the Department of Consumer Affairs within thirty (30) days after commencing business. 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 as defined by [Section 37-3-106 of the Code](#) and, therefore, would not constitute a consumer loan. It is my opinion that this transaction would be a credit sale, but inasmuch as the debt will be primarily secured by a first lien which has a purchase money security interest in land, the transaction would not be a 'consumer credit sale'. See, Section 37-2-104(2)(b). Obviously this transaction is not a consumer lease. Therefore, in conclusion, it does not fall within any of the categories under [Section 37-6-201 of the Code](#), which would require notification under [Section 37-6-202](#).

With regard to registration by the Board of Financial Institutions, [Section 37-3-502 of the Code](#) requires an individual to obtain a license from the Board before he engages in the business of making supervised loans. A 'supervised loan' is defined by Section 37-3-501 to mean:

'a consumer loan in which the rate of the loan finance charge exceeds twelve (12%) percent per year as determined according to the provisions on loan finance charge for consumer loans.'

As discussed previously, it is my opinion that this particular transaction would not be a 'consumer loan.' However, if this transaction was not a 'bona fide sale,' but rather a loan transaction set up for the purpose of defeating the Usury Laws (see, [Brown v. Crandall](#), 218 S.C. 124, 641 S.E.2d 761 (1950); [Davenport v. Unicapital Corp.](#), 267 S.C. 691, 230 S.E.2d 905 (1976)), then the loan would be a supervised loan and, therefore, would require registration by the Board of Financial Institutions.

I hope this will be of some assistance to you. With cordial best wishes, I am

Very truly yours,

**\*2** Richard B. Kale, Jr.

Senior Assistant Attorney General

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