

1980 WL 121158 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 8, 1980

**\*1 RE: Usury Law on Real Estate Mortgages**

The Honorable Ron L. Cobb  
Member  
House of Representatives  
P. O. Box 11867  
Columbia, South Carolina 29211

Dear Representative Cobb:

You have requested an opinion from this office on the following question:

Can a lender charge 'points' in addition to any other interest charges and still comply with Act No. 7 of 1979 when making a loan secured by a first mortgage on real estate?

As you are aware, Act No. 7 suspended the usury law as it applies to a loan secured by a first mortgage on real estate until June 30, 1981, and provided that until that date the parties can contract for any rate of interest. The 'points' that you referred to in your letter, I assume to be discount 'points'. The term 'discount' has been defined by one court to refer to 'that step in a lending transaction where interest on a loan is taken in advance by deducting the amount therefor for the term of the loan, giving the borrower the face value of the obligation less the interest. [Russell v. Lumbermen's Mortgage Company, 27 Ohio Misc. 171, 273 N.E.2d 803 \(1966\)](#). This practice has long been recognized as lawful so long as the written obligation contains a provision permitting such collection in advance. [See, Johnson v. Grace, 175 S.C. 312, 179 S.E. 39 \(1935\)](#). It is my understanding that it is a common practice in real estate loans, especially with VA or FHA mortgages, to require either the seller or the purchaser to pay discount points. Of course, if there was a maximum interest rate, the regular interest and the discount 'points' could not exceed the lawful rate of interest. However, since Act No. 7 of 1979 provides that there is no maximum rate of interest on loans secured by a first mortgage on real estate, it is the opinion of this office that a lender can charge any amount of discount points in addition to other interest charges until June 30, 1981.

If you should need any further information in this regard, please do not hesitate to contact me.

Very truly yours,

Richard B. Kale, Jr.  
Senior Assistant Attorney General

1980 WL 121158 (S.C.A.G.)

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.