

1975 S.C. Op. Atty. Gen. 28 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3956, 1975 WL 22254

Office of the Attorney General

State of South Carolina

Opinion No. 3956

January 30, 1975

*1 Pudolph C. Barnes

Attorney at Law

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Dear Mr. Barnes:

Mr. McLeod has requested that I respond to your inquiry regarding R-1377, as to whether or not the lender may pass along to the borrower the expense of the lender's attorney.

R-1377 was adopted to ensure that the borrower in a real estate loan and mortgage transaction would be represented by counsel of his own choosing. The only restriction imposed is that the lender may require as security that the borrower's attorney or agent be able to provide mortgage title insurance and other insurance in a company acceptable to the lender.

Your question arises when the lender and the borrower have separate counsel. The legislative intent in adopting R-1377 clearly appears to have been to protect the borrower's right to be represented by an attorney of his own choosing. If the lender decides to retain separate counsel then he must bear such expenses. To allow otherwise would in effect negate the intent of R-1377, as a borrower would be reluctant to designate counsel of his choice if he were to bear the expense of both. Though R-1377 is silent as to who must bear the attorney expenses, the intent to protect the borrower and encourage him to be represented by counsel of his own choosing is apparent.

If this office may provide further assistance in this matter do not hesitate to call upon us.

Very truly yours,

Patricia O. Prehmer

Assistant Attorney General

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