

1974 WL 27807 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 5, 1974

*1 In cases where a construction loan is made to build numerous houses and numerous mortgages are executed to secure the note, each mortgage must bear stamps in an amount equivalent to the consideration for the individual mortgage.

Mr. J. W. Lawson
Director
License Tax Division
South Carolina Tax Commission
Columbia, South Carolina

Dear Mr. Lawson:

Reference is made to the letter dated May 10, 1974, from David A. Quattlebaum to you and the request made therein relating to documentary stamps required by Section 65-688 of the South Carolina Code of Laws as amended in 1974.

It is stated in his letter, and this office has condensed the factual information furnished, that a lending institution wishes to consolidate one of its customer's individual construction loans, each of which amounts to less than fifty thousand dollars, into one large commitment evidenced by one note. The obvious purpose is to allow the lending institution to charge the higher rate of interest provided by South Carolina law. The note will be secured by numerous mortgages covering individual houses under construction. Loan proceeds, however, would actually be advanced as construction progresses and the mortgages will be executed simultaneously therewith or within a brief period of time. Such will occur shortly after execution of the note.

Mr. Quattlebaum suggests in his letter that the lender furnish an affidavit with each mortgage which states thereon the amount of the consideration secured by the mortgage and that such should constitute the basis for documentary stamps. It is the opinion of this office that the procedure suggested by Mr. Quattlebaum for taxing the mortgage is proper in that mortgages are taxable, and notes secured by mortgages are exempt. The procedure for determining the consideration appears proper.

It is our conclusion, therefore, that as the mortgages are executed, an affidavit showing the exact consideration for such mortgage be furnished and the same be stamped accordingly.

Yours truly,

G. Lewis Argoe, Jr.
Assistant Attorney General

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