

1974 WL 27842 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 2, 1974

*1 William H. McNair, Esquire
Attorney at Law
200 Attorneys Building
Charlotte, NC 28202

Dear Mr. McNair:

You have asked whether or not a North Carolina second mortgage lender, which is a subsidiary of a North Carolina licensed consumer finance company, can make loans to South Carolina citizens and receive charges as authorized by North Carolina law without being in violation of Section 8-800.18 of the South Carolina Consumer Finance Act.

Section 8-800.18, 1962 Code of Laws of S. C. (1973 Supp.) provides:

No loan made outside this State in the amount of or of the value of seventy-five hundred dollars or less for which a greater rate of interest, consideration, or charge than is permitted by Section 8-800.10 has been charged, contracted for or received, shall be enforced in this State . . . , but this Section shall not apply to loans legally made in any state under and in accordance with a regulatory consumer finance law similar in principles to this Chapter. (emphasis added)

The lender would be making second mortgage real estate loans pursuant to Section 24-12, of the North Carolina Code. The lender is not actually licensed under the North Carolina Consumer Finance Act (Section 53-164 et seq.) but rather is making second mortgage loans pursuant to Section 24-12, in amounts of seventy-five hundred dollars or less. The question then presented is whether or not the lender is lending under a 'regulatory consumer finance law similar in principles' as required by Section 8-800.18, of the South Carolina Consumer Finance Act, note that this standard requires more than merely that the loan be legally made under the laws of another state.

The South Carolina Consumer Finance Act does not prohibit second mortgage loans but does prohibit loans which are either 'directly or indirectly for the purchase price of real interest or an interest therein and which is secured by a purchase money lien or interest therein . . .' Section 8-800.10(h).

If your client is lending under the North Carolina consumer finance act then I believe that the requirements of the South Carolina Consumer Finance Act, Section 8-800.18 are met. However, if the lender is loaning under the authority of the North Carolina second mortgage loans statute, then I do not believe such loans are being made under a 'regulatory consumer finance law similar in principle' as required by South Carolina's consumer Finance Act.

If our office may be of further assistance to you in this matter, do not hesitate to call upon us.

Very truly yours,

Patricia O. Brehmer
Assistant Attorney General

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