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CHAPTER 10.

MISCELLANEOUS LOAN PROVISIONS

SECTION 37-10-101. Scope.

Except as otherwise provided in other chapters of this title, this chapter applies to designated loan transactions other than consumer loan transactions (Sections 37-3-104 and 37-3-105).

HISTORY: 1982 Act No. 385, Section 56; 1984 Act No. 261, Section 7.

SECTION 37-10-102. Attorney's fees and other charges on mortgage loans for personal, family or household purposes.

Whenever the primary purpose of a loan that is secured in whole or in part by a lien on real estate is for a personal, family or household purpose -

(a) The creditor must ascertain prior to closing the preference of the borrower as to the legal counsel that is employed to represent the debtor in all matters of the transaction relating to the closing of the transaction and except in the case of a loan on property that is subject to the South Carolina Horizontal Property Act (Section 27-31-10 et seq.) the insurance agent to furnish required hazard and flood property insurance in connection with the mortgage and comply with such preference.

The creditor may comply with this section by:

(1) including the preference information on or with the credit application so that this information shall be provided on a form substantially similar to a form distributed by the administrator; or

(2) providing written notice to the borrower of the preference information with the notice being delivered or mailed no later than three business days after the application is received or prepared. If a creditor uses a preference notice form substantially similar to a form distributed by the administrator, the form is in compliance with this section.

The creditor may require the attorney or agent to provide reasonable security to the creditor by way of mortgage title insurance in a company acceptable to the creditor and to comply with reasonable closing procedures. If title insurance is made a condition of the loan at any point during the negotiations, it must remain a condition all the time thereafter regardless of which attorney ultimately closes the transaction. Any legal fees other than for examination and certification of the title, the preparation of all required documents, and the closing of the transaction required or incurred by the creditor in connection with the transaction is the responsibility of the creditor regardless of which party pays for the title work, document preparation, and closing.

(b) The creditor may contract and receive the following additional charges in a transaction in which the creditor authorizes a transferee of the real estate that serves as security for the transaction to assume the original debtor's obligation -

(i) Except as otherwise provided in subparagraph (iii), the additional charges authorized by Section 37-3-202;

(ii) The charge for any credit report on the debtor required by the creditor, if not paid to the creditor or a person related to the creditor; and

(iii) A nonrefundable assumption fee in an amount not exceeding the lesser of four hundred dollars or one percent of the unpaid balance of the loan at the time the assumption transaction is consummated.

(c) [Deleted.]

HISTORY: 1982 Act No. 385, Section 56; 1984 Act No. 355, Section 10; 1989 Act No. 164, Section 3; 1991 Act No. 142, Section 23; 1996 Act No. 355, Section 1.

SECTION 37-10-103. Prepayment of loans of one hundred fifty thousand dollars or less.

The debtor may prepay in full at any time without penalty the debt represented by a personal, family, or household purpose loan agreement that is secured in whole or in part by a first or junior lien on real estate if the aggregate of all sums advanced will not exceed one hundred fifty thousand dollars.

HISTORY: 1982 Act No. 385, Section 56; 1984 Act No. 355, Section 11; 2003 Act No. 42, Section 2.A, eff Jan. 1, 2004, and applying to loans for which the loan applications were taken on or after that date.

SECTION 37-10-104. Agricultural loans under twenty-five thousand dollars.

With respect to a loan under which the aggregate of all sums advanced or contemplated by the parties in good faith to be advanced is less than twenty-five thousand dollars and which is primarily for an agricultural purpose, the maximum loan finance charge that may be contracted for and received shall be eighteen percent per annum, calculated according to the actuarial method.

HISTORY: 1982 Act No. 385, Section 56.

SECTION 37-10-105. Violations; civil actions.

(A) If a creditor violates a provision of this chapter, the debtor has a cause of action, other than in a class action, to recover actual damages and also a right in an action, other than in a class action, to recover from the person violating this chapter a penalty in an amount determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars. No debtor may bring a class action for a violation of this chapter. No debtor may bring an action for a violation of this chapter more than three years after the violation occurred, except as set forth in subsection (C). The three-year statute of limitations applies to actions commenced after May 2, 1997. No inference should be drawn as to the applicable statute of limitations for any pending actions. This subsection does not bar a debtor from asserting a violation of this chapter in an action to collect a debt which was brought more than three years from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action.

(B) No creditor may be held liable in an action brought under this section for a violation of this chapter if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

(C) If the court finds as a matter of law that the agreement or transaction is unconscionable pursuant to Section 37-5-108 at the time it was made, or was induced by unconscionable conduct, the court may, in an action other than a class action:

(1) refuse to enforce the agreement, or a term, or part of the agreement or transaction that the court determines to have been unconscionable at the time it was made;

(2) enforce the remainder of the agreement without the unconscionable term or part, or limit the application of the unconscionable term or part to avoid an unconscionable result;

(3) rewrite or modify the agreement to eliminate an unconscionable term, part, or result and enforce the new agreement; or

(4) award:

(a) not more than the total amount of the loan finance charge and allow repayment of the unpaid balance of the loan without any finance charge;

(b) not more than double the amount of the excess loan finance charge or other charges or fees actually received by the creditor or paid by the debtor to a third party; and

(c) attorney's fees and costs.

An action pursuant to this subsection may not be brought after the original scheduled maturity date of the debt.

(D) In an action in which it is found that a creditor has violated this chapter, the court shall award to the debtor the costs of the action and to his attorneys their reasonable fees. In determining attorneys' fees, the amount of the recovery on behalf of the debtor is not controlling.

HISTORY: 1982 Act No. 385, Section 56; 1997 Act No. 99, Section 1.

SECTION 37-10-106. Maximum rate of interest; legal rate of interest.

(1) No greater interest than six percent per annum shall be charged, taken, agreed upon or allowed upon any contract arising in this State for the hiring, lending, or use of money or other commodity, either by way of straight interest, discount or otherwise, except upon written contracts wherein, by express agreement, any rate of interest may be charged, except as otherwise provided in this title or by law.

(2) Whenever the term legal rate of interest or lawful rate of interest is used in any contract, judgment or other document, it shall mean the rate specified in Section 34-31-20, unless the document otherwise specifically provides.

(3) No greater interest than eight percent per annum shall be charged on life insurance policy loans unless otherwise provided by law.

HISTORY: 1982 Act No. 385, Section 56.

SECTION 37-10-107. Certain legal or equitable actions prohibited.

(1) No person may maintain an action for legal or equitable relief or a defense based upon a failure to perform an alleged promise, undertaking, accepted offer, commitment, or agreement:

(a) to lend or borrow money;

(b) to defer or forbear in the repayment of money; or

(c) to renew, modify, amend, or cancel a loan of money or any provision with respect to a loan of money, involving in any such case a principal amount in excess of fifty thousand dollars, unless the party seeking to maintain the action or defense has received a writing from the party to be charged containing the material terms and conditions of the promise, undertaking, accepted offer, commitment, or agreement and the party to be charged, or its duly authorized agent, has signed the writing.

(2) Failure to comply with subsection (1) precludes an action or defense based on any of the following legal or equitable theories:

(a) an implied agreement based on course of dealing or performance or on a fiduciary relationship;

(b) promissory or equitable estoppel;

(c) part performance, except to the extent that the part performance may be explained only by reference to the alleged promise, undertaking, accepted offer, commitment, or agreement; or

(d) negligent misrepresentation.

(3) Subsections (1) and (2) do not apply to:

(a) a loan of money used primarily for personal, family, or household purposes;

(b) an agreement or change in the terms of an agreement relating to a line of consumer credit, lender credit card, or similar arrangement;

(c) an overdraft on a demand deposit or other bank account; or

(d) promissory notes, real estate mortgages, security agreements, guaranty and surety agreements, and letters of credit.

(4) In the event of a conflict between this section and any other provision of law of this State relating to the requirement of a signed writing, the provisions of the other provision of law shall control.

HISTORY: 1991 Act No. 142, Section 24.