



GALE A. NORTON
Attorney General

STEPHEN K. ERKENBRACK
Chief Deputy Attorney General

TIMOTHY M. TYMKOVICH
Solicitor General


STATE OF COLORADO
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street - 5th Floor
Denver, Colorado 80203
Phone (303) 866-4500
FAX (303) 866-5691

April 10, 1995

M E M O R A N D U M

TO: Mortgage Lenders

FROM: Tammy Campbell 
Assistant Attorney General

RE: Loans primarily secured by an interest in land

This memorandum is intended to clarify section 5-3-105, C.R.S. (1992) of the Uniform Consumer Credit Code ("UCCC") regarding loans secured by an interest in land. That section reads in part as follows:

Unless the loan is made subject to this code by agreement . . . and except as provided with respect to disclosure . . . , debtors' remedies . . . , and powers of the administrator . . . , "consumer loan" does not include a loan secured by a mobile home or a "loan primarily secured by an interest in land", if at the time the loan is made the value of this collateral is substantial in relation to the amount of the loan, and the rate of the loan finance charge does not exceed twelve percent per year . . . , or, notwithstanding the rate of the loan finance charge, the loan is secured by a first mortgage or deed of trust lien against a dwelling to finance the acquisition of that dwelling or to refinance . . . an existing loan made for that purpose . . . ; except that as to any refinance loan in the form of a revolving loan account which is in whole or in part for purposes other than acquisition or construction, section 5-3-408 [Change in terms of revolving loan accounts] shall apply.

When assessing whether a loan is excluded from the UCCC pursuant to § 5-3-105, the first question to ask is, "Have the parties agreed that the loan will be subject to the UCCC?" If so, the analysis ends here; the loan is subject to the UCCC. See

C.R.S. § 5-3-601. If not, an inquiry into the nature of the loan in question is necessary.

In sorting out the complex language of C.R.S. § 5-3-105, it is helpful to understand the purpose of this particular section of the UCCC. The Official Comment to section 5-3-105 states:

The purpose of this section is to exclude the ordinary home mortgage from all provisions of this code except those on disclosure . . . and debtors' remedies . . .; however, the Code is intended to include as consumer loans high rate loans which are characteristic of the second mortgage small loan business.

Therefore, the next step in assessing the applicability of C.R.S. § 5-3-105 depends upon the answer to this question: "Is the loan a first mortgage against a home to finance its acquisition or construction?" Note that there are two parts to this question: (1) "Is the loan a first mortgage?"; and (2) "Is the loan for acquisition or construction?" If the answer to both is "yes," the lender is subject to only the disclosure and remedial requirements of the UCCC and the powers and functions of the Administrator. But keep in mind that it is possible for a lien against a home to be a first mortgage even though the proceeds of the loan may not have been used for acquisition or construction purposes--a home equity loan, for example. Therefore, if the answer to the second part of the question is "no," further inquiry into the nature of the loan is necessary.

The next logical question to ask is, "Is the loan a refinancing of a first mortgage acquisition loan?" Such loans are also exempt from the UCCC under C.R.S. § 5-3-105. This includes refinance loans providing additional sums to the borrower for purposes unrelated to acquisition or construction. This also includes refinancings of refinance loans.¹ If the answer to this question is "no," supplementary scrutiny of the loan is necessary.

The next two inquiries are: (1) "Was the value of the collateral substantial in relation to the amount of the loan at the time the loan was made?"; and (2) "Is the interest rate equal to or less than twelve percent per year?" (For a variable rate loan, look to whether the rate cap could potentially exceed twelve percent per year even if it currently does not.) If the answer to both questions is "yes," the loan is not a consumer loan as defined by the UCCC, and the lender is subject to only the disclosure and remedial requirements of the UCCC and the

¹ See June 18, 1986 unofficial opinion letter from the Administrator.

powers and functions of the Administrator. If the answer to either question is "no," the loan is a consumer loan, and the lender is subject to all relevant provisions of the UCCC.

When assessing whether a loan primarily secured by an interest in land is a consumer loan remember that: (1) if the interest rate exceeds twelve percent, the consumer loan is a supervised loan and subject to all relevant UCCC provisions (C.R.S. § 5-3-501(1)); (2) the \$25,000 cap does not apply (C.R.S. § 5-3-104(1)(d)); (3) loans for business, investment or commercial purposes or primarily for agricultural purposes are not consumer loans (C.R.S. § 5-3-104(2)(a) and (b)); and (4) reverse mortgages are not subject to the UCCC (C.R.S. § 5-3-104(2)(c)).

In summary, the confusing language of C.R.S. § 5-3-105 can be overcome by asking yourself the following questions in logical order:

1. Have the parties agreed that the loan will be subject to the UCCC?
2. Is the loan a first mortgage against a home to finance its acquisition?
3. Is the loan a refinancing of a first mortgage acquisition loan?
4. (a) Was the value of the collateral substantial in relation to the amount of the loan at the time the loan was made?; and (b) Is the interest rate equal to or less than twelve percent per year?

Remember that while C.R.S. § 5-3-105 may exempt certain loans from the UCCC's definition of consumer loan and related provisions, the lender is not exempted from the UCCC disclosure and remedial requirements and the powers and functions of the Administrator. Attached is a checklist to help you quickly identify whether a loan primarily secured by an interest in land is a consumer loan under the Uniform Consumer Credit Code.

LOANS PRIMARILY SECURED BY AN INTEREST IN LAND
§ 5-3-105

Checklist

<u>Characteristics of loan</u>	<u>Consumer loan?</u>	
	<u>Yes</u>	<u>No</u>
First mortgage loan used to finance acquisition of home		no
Refinancing of first mortgage acquisition loan		no
First mortgage loan not for acquisition purposes; interest rate less than or equal to 12%		no
First mortgage loan not for acquisition purposes; interest rate greater than 12%	yes	
Junior mortgage loan; interest rate less than or equal to 12%		no
Junior mortgage loan; interest rate greater than 12%	yes	