

7102 February



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

April 4, 2001

The Honorable André Bauer
Member, South Carolina Senate
P.O. Box 142
Columbia, South Carolina 29202

Dear Senator Bauer:

You have requested clarification of the statutes pertaining to the registration of mortgage loan brokers. S.C. Code Ann §40-58-10, et seq (2001). Section 40-58-10(B)(1) states that “[n]o . . . corporation, . . . or other organization shall broker a residential mortgage loan as defined in this chapter unless the broker of the mortgage loan: (1) is an exempt person or organization as defined by section 40-58-20(5); or (2) has complied with the provisions of this chapter.” Section 40-58-30 requires mortgage loan brokers to be licensed but states that “. . . the provisions of this chapter do not apply to an exempt person or organization as defined in Section 40-58-20(5).” Under §40-58-20(5), “[e]xempt person or organization’ means (a) . . . a supervised lender under Title 37” According to your constituent, his company is a “supervised licensed lender under Title 37.” Section 37-3-501(2) (1989) defines “supervised lender” as “a person authorized to make or take assignments of supervised loans.” Section 37-3-503 provides for licenses to make “supervised loans.” The term supervised loans is defined under §37-3-501(1).

According to the documents that came with your request, The Department of Consumer Affairs takes the position that supervised lenders are free to make loans as they are licensed to do, but they are not free to act as loan brokers in areas in which they are not necessarily otherwise licensed or authorized. Memorandum of Administrator, Department of Consumer affairs, July 8, 1996. Because the Department of Consumer Affairs has regulatory authority under the above laws, a Court would not be likely to overrule its interpretation “absent compelling reasons.” *Dunton v. South Carolina Board of Examiners in Optometry*, 291 S.C. 221, 353 S.E. 2d 132 (1987). This interpretation of the Department of Consumer Affairs appears to have support in that the above provisions of Title 37 which define the term “supervised lender” in terms of the loans that it makes and requires such lenders to have licenses. Under that view, the exemptions in §40-58-10, et seq would apply only to the extent of the licenses of those supervised lenders.

Because the Department’s conclusions appear to have support in the law, a Court would not be likely to overrule its interpretation of the above laws as they apply to supervised licensed lenders. *Dunton*. Accordingly, if a change is desired in how the above laws are applied, legislative amendment appears to be the means for doing so.

Respectfully

The Honorable André Bauer
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This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

If you have further questions, please let me know.

Yours very truly,

A handwritten signature in black ink, appearing to read "J. Emory Smith, Jr.", written in a cursive style.

J. Emory Smith, Jr.
Assistant Deputy Attorney General