

1976 S.C. Op. Atty. Gen. 213 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4375, 1976 WL 22994

Office of the Attorney General

State of South Carolina

Opinion No. 4375

June 21, 1976

*1 On loans secured by first mortgages on real estate no greater rate of interest than that allowed by Section 8-3, 1962 Code of Laws of South Carolina (1975 Cum. Supp.) may be charged.

Lending agencies may make second mortgage real estate loans at 7% add-on charges pursuant to Section 8-233, 1962 Code of Laws of South Carolina (1975 Cum. Supp.).

To: B. O. Thomason, Jr.
Attorney at Law

QUESTION PRESENTED:

What rate(s) of interest may be charged on home improvement loans secured by first and/or second mortgages on real estate?

DISCUSSION:

This office rendered an opinion in 1967-68¹ that lending agencies registered under the Consumer Finance Act, Section 8-800.19 (1962 Code of Laws of South Carolina, 1975 Cum. Supp.) could make loans secured by second mortgages on real estate at 6 ²/₁% add-on charges under Section 8-233. Subsequently, in 1968, the Legislature amended the 6 ²/₁% add-on rate of 8-233 to 7% add-on. No other amendments have been made to Section 8-233 and the position of this office is that as rendered in Opinion No. 2538, 1967-68 OP. Atty. Gen. P. 230, with the rate of interest being the amended rate of 7%.

Section 8-233 makes no distinction as to the type of collateral securing a loan. Section 8-3, which must be read along with 8-233 as the general usury law², does however, specify the legal rate of interest on loans secured by first mortgages on real estate.

§ 8-3:

... in the case of loans secured by first mortgages on real estate ... the rate of interest shall not exceed ... (emphasis added)

It seems apparent that the Legislative intent, in so far as the legal rate of interest that can be charged on first mortgage real estate loans, has been expressed, and that the simple interest rates specified in Section 8-3 are the maximum charged that can be collected on a first mortgage real estate loan.

Patricia O. Brehmer

Assistant Attorney General

Footnotes

1 1967–68 OP. Atty. Gen., P. 230.

2 1970–71 OP. Atty. Gen., P. 83.

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