

Consumer Finance Administrative Interpretations

Administrative Interpretation No. 1 Scope of Other Business Authority Under G.S. 53-172

Withdrawn, February 2, 1993.

Administrative Interpretation No. 2 Consumer Finance Licensee Affiliates of Subsidiaries Mortgage Banker/Broker Registration

Administrative Interpretation No. 2 entitled "Consumer Finance Licensee Mortgage Lender/Broker Registration," dated December 13, 1988, is hereby revoked in its entirety and reissued as follows.

G.S. 53-235(d), effective August 1, 1989, requires affiliates or subsidiaries operating in the same office of a licensee under the North Carolina Consumer Finance Act to register with the Commissioner in accordance with G.S. 53-235(a) and (b). They are, however, exempt from payment of an application or annual fee.

In order for a licensee to retain its existing other business authority heretofore granted under G.S. 53-172 to operate in the same location as this affiliate or subsidiary, or to hereafter be approved for such authority, the affiliate or subsidiary must be registered with the Commissioner under the Mortgage Banker/Broker Act, G.S. 53-233 et seq.

October 15, 1992 (Revised)

Administrative Interpretation No. 3 Credit Property Insurance

G.S. 53-189 permits a consumer finance licensee (licensee) to write credit property insurance in accordance with G.S. 58-341, et seq. (now G.S. 58-57-1, et seq).

G.S. 58-57-90(b) limits the amount of credit insurance that may be written to the lesser of the value of the property or the amount of the initial indebtedness (interpreted to mean the loan principal plus unearned interest).

G.S. 58-63-15(13) declares it an unfair or deceptive act or practice for a lender to require a borrower to purchase property insurance which results in coverage which exceeds the replacement value of the collateral at the time of the loan or extension of credit.

A licensee may not write credit property insurance on personal property that cannot be taken as collateral. Therefore, credit property insurance cannot be written on household goods which are prohibited from use as collateral under the Federal Trade Commission Credit Practices Rule, 16 C.F.R. 444.2(a)(4) (1984).

G.S. 58-57-90(b) requires the Department of Insurance to collect data on credit property insurance written in North Carolina. It is the policy of the Commissioner to review credit property insurance written in connection with a consumer finance loan. Any apparent violations of the credit property insurance laws will be reported to the Department of Insurance, which is charged with the enforcement of insurance laws.

October 15, 1992 (Revised)

Administrative Interpretation No. 4 Non-Filing Insurance

G.S. 53-177 allows a consumer finance licensee to collect from a borrower the fee necessary to record a security interest under the Uniform Commercial Code (G.S. 25-9-302 et seq.) or under the motor vehicle statutes (G.S. 20-58 et seq.).

With full disclosure to the borrower, the lender may use this fee in one of the following ways.

1. Pay the collected fee to the appropriate recording agency and thereby perfect its security interest.
2. Collect a fee equal to a non-filing insurance premium and purchase non-filing insurance. The non-filing premium is set by the Commissioner of Insurance.
3. Collect an amount equal to the non-filing insurance premium and retain same thereby self-insuring against the risk of not perfecting a security interest. The amount collected for self-insurance must be reported as part of the finance charge under the Truth in Lending regulations.

G.S. 25-9-403(2) provides that a perfected security interest remains valid for a period of five years. Generally, a refinancing does not affect a perfected security interest. Therefore, while a security interest remains perfected, a lender may not collect any additional filing fees, non-filing insurance premiums, or self-insurance fees when the loan is refinanced.

When non-filing insurance is purchased on the initial loan, the coverage generally terminates upon refinancing. Therefore, if the loan is refinanced, a lender may collect another non-filing insurance premium and purchase new non-filing insurance.

If a lender elected to self-insure against the risk of not perfecting a security interest on the initial loan, for a period of five years he should avoid collecting a non-filing insurance premium or an amount equal to that premium for self-insurance provision is to compensate the lender only for the risk of not filing. If a lender perfects a security interest when a loan is initially made, that interest is protected when the loan is refinanced. If a lender does not perfect a security interest on the initial loan, it is inappropriate, although it is not illegal, for him to collect multiple self-insurance fees during the period that the security interest would have been protected.

G.S. 53-166(d) provides that loan contracts which violate the Consumer Finance Act are void, and the licensee has no right to collect, receive, or retain any principal or charges whatsoever with respect to these loans.

March 22, 1990

Administrative Interpretation No. 5 (Rev. June 2014)
Ancillary Proceedings and Judgments

Administrative Interpretation No. 5 was issued March 22, 1990, in order to explain the position of the Office of the Commissioner of Banks on the effect of ancillary proceedings and judgments on the contract interest rate for consumer finance loans made under G.S. §§ 53-173 and 53-176. In summary, the original interpretation concluded that an order in an ancillary proceeding is not a final judgment. Therefore, until a final judgment has been entered by the court in a civil action to collect the debt in which there has been an ancillary proceeding to enforce a security interest in the collateral, a consumer loan contract may continue to accrue interest at the contract rate. Administrative Interpretation No. 5 also indicated that when the court entered a "property judgment," the judgment rate of 8% replaces the contract rate of interest from the date of judgment.

As the result of amendments to the Consumer Finance Act (the CFA) by the 2013 Session of the General Assembly, and upon further review of the matter, it is appropriate to republish Administrative Interpretation No. 5 and clarify the effect of an ancillary proceeding and judgment on a consumer finance debt.

Senate Bill 489, enacted as Session Law 2013-162, effective July 1, 2013, repealed the small loan provisions under G.S. § 53-173 (loans up to \$3000), and placed consumer finance loan amounts, rates and maturities under G.S. § 53-176(a). This revision did not, however, eliminate the restriction on interest after judgment of 8% under G.S. § 53-173(c), nor the applicability of this limitation on post-judgment interest for loans made under amended G.S. § 53-176(a). While there are no longer any loans made under G.S. § 53-173(a), G.S. § 53-176(c) continues to subject "loans made pursuant to this section" to a limit on interest after judgment of 8% by cross reference to G.S. § 53-173(c). This limitation is consistent with the post-judgment interest rate of 8% on loans made under G.S. 24-5(a) for credit extended for personal, household or agricultural purposes.

Administrative Interpretation No. 5 recognized that an ancillary proceeding is an interim process by which a court may order the seizure of property taken to secure a loan. It appeared, however, to suggest that an order in an ancillary

proceeding was a “property judgment” and that following entry of a property judgment, the debt was merged into the judgment; therefore, the creditor was limited to collecting interest at 8%. This interpretation is revised to recognize that only after there is a final judgment on the merits of an action to collect a debt does the post-judgment limitation of 8% interest apply. An order in an ancillary proceeding is not a final judgment in the matter. Until a final judgment has been entered in the matter, the creditor may continue to collect the contract rate of interest.