



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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June 30, 1982 No. 82-12

Mr. Larry E. Temple
Attorney at Law
1510 United Bank Tower
Austin, Texas 78701

Dear Mr. Temple:

This is to acknowledge receipt of your letter dated June 25, 1982 concerning Chapter 5, Article 5069, V.T.C.S.

I will quote a portion of your letter as follows:

"As you know, creative financing techniques in the present financial marketplaces have variations on the traditional situation where a property seller merely retains a secondary mortgage loan and the buyer makes periodic payments directly to the seller until the loan is satisfied. There are presently in the marketplace individuals and companies who will service (collect the periodic payments from the borrower and remit them to the seller) secondary mortgage loans for the seller who continues to own the secondary mortgage loan. That arrangement gives rise to several questions:

- "1. Does a seller of property who makes or retains a secondary mortgage loan to secure all or part of the unpaid purchase price of his property need to secure a license under Chapter 3 of the Texas Credit Code if he arranges for the secondary mortgage loan to be serviced by some other individual or entity?
- "2. Does the seller of property who retains or makes a secondary mortgage loan to secure all or part of the unpaid purchase price in connection with the sale of his property need to secure a license under Chapter 3 of the Texas Credit Code if he thereafter sells, conveys, or transfers that secondary mortgage loan to some other individual or entity?"

Article 5069-5.01(3) provides as follows:

"The provisions of this Chapter shall not apply to any seller of property who makes a secondary mortgage loan to secure all or part of the unpaid purchase price."

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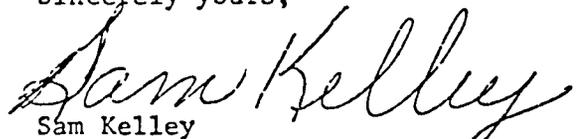
June 30, 1982

It has been the position of this Office for a number of years that the above quoted Article 5.01(3) precluded the applicability of Chapter 5 to sellers of property who retain a secondary mortgage to secure all or part of the purchase price of the property sold. This is still the position of our Office if the sellers of the property are not engaged in the business of making those loans. The sellers of property described in your letter are individuals who are selling their own residences and retaining a second lien and are not engaged in the business of making Chapter 5 transactions. Our response to each of your questions is "No." The sellers described in your letter would not need to be licensed by this Office.

Although not directly raised by your letter I would like to point out a somewhat related matter. Article 5069-1.04(n)(2) provides (paraphrase) that a person engaged in the business of making loans as described in Article 5.01(1) and who is charging the interest rates now authorized by Article 1.04 must obtain a license from this Office. Article 1.04(n)(2) makes no mention of sellers of property being excluded from the provisions of Chapter 5 if they are in the business of making Chapter 5 transactions and are charging Article 1.04 rates. I am of the opinion therefore that if a seller of property is in fact engaged in the business of making secondary mortgage loans (an example would be a business concern which purchases single family residences, repairs them, resells them to the public and takes secondary mortgages for part of the purchase price) and charges Article 1.04 interest rates that such seller would be subject to Chapter 5.

This of course does not affect our response to your questions since the sellers described in your letter are not engaged in the business of making Chapter 5 loans and thus do not need to be licensed.

Sincerely yours,


Sam Kelley
Consumer Credit Commissioner