



DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF CONSUMER CREDIT PROTECTION
STATE HOUSE STATION 35
AUGUSTA, MAINE 04333-0035
(207)582-8718
Telecopier: 582-5415

ADVISORY RULING #98
MAY 20, 1991

May 20, 1991

Re: Credit Sale of Land Not Supervised Loan

Dear

You have asked whether the proposed activities of [a non-profit low-income housing trust] require that your organization obtain a Supervised Lender License. Based on your description of the planned transactions, it is my opinion that licensing is not needed.

The arrangement will be as follows:

The trust will develop its own housing units. It will then sell those units to low-income consumers. Using a hypothetical example of a unit worth \$75,000, the trust would allow the unit to be purchased with the proceeds of a traditional \$50,000 first mortgage from a bank or mortgage banking company. As for the balance of \$25,000, the trust would take back a second mortgage in that amount, with no periodic payments, but subject to payment in full upon resale of the property.

I interpret the trust's portion of this transaction to constitute a "consumer credit sale" defined in 9-A M.R.S.A. §1-301(11), rather than a "supervised loan," pursuant to sub-section 40 of that section.

That the drafters of the Consumer Credit Code did not intend all transactions involving real estate to be considered supervised loans, is clear by the inclusion in the definition of "consumer credit sale," "a sale of goods, services or an interest in land" (emphasis supplied)(9-A M.R.S.A. §1-301(11)).

Regardless of whether the resulting obligation to the trust is evidenced by a mortgage similar to the type commonly used in a supervised loan, the transaction in this case cannot qualify as a supervised loan because it does not contain the essential element of a loan; namely, "the creation of debt by the lender's payment of or agreement to pay money to the debtor" (emphasis supplied)(9-A M.R.S.A. §1-301(23)(A)).

The Code's inclusion of a reference to the financing of real estate sales as credit sales, and the absence of any money being loaned by your agency, lead to the conclusion that your agency's activities do not constitute supervised lending requiring licensure.

MAY 20, 1991

PAGE 2

Despite the lack of a licensing requirement, please be aware of the applicability of various other Code sections to the proposed transactions, including §2-201, §2-501 - §2-601, and Articles III, IV, V, VI and VIII.

You may rely upon this interpretation pursuant to 9-A M.R.S.A. §5-201(10) and §6-104(2) so long as your agency's operations remain as proposed to the Bureau.

Sincerely,

William N. Lund
Superintendent

WNL/bas