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RE: Tax service fees

Dear :

In your response to our examination report, you requested an administrative interpretation regarding tax service fees. Please excuse our oversight in failing to respond to your request sooner. Also, please note that while this letter reflects our current enforcement policy, it is not an official administrative interpretation pursuant to section 5-6-104(4), C.R.S. (1992).

Our examination report contained the following comment:

TAX SERVICE FEE - NOT A PERMITTED ADDITIONAL CHARGE
One or more debtors were charged a tax service fee as an additional charge. This fee is not a permitted additional charge under § 5-3-202, C.R.S. (1992). It is our position that a refund must be made to the debtor(s).

Tax service fees are charged in connection with loans secured by real estate. The \$55 charge pays for a service which monitors whether property taxes have been paid up to date. If the taxes are not paid, the debtor is notified. You do not maintain escrow accounts for property taxes. You contend that the tax service fee is a permitted additional charge under section 5-3-202, C.R.S. (1992), because it is charged in lieu of maintaining escrow accounts.

The Administrator considers the list of additional charges contained in section 5-3-202 to be exhaustive. Tax service fees are no where mentioned in that section. While section 5-3-202(3) does specifically mention "reasonable closing costs," the definition of closing costs does not include tax service fees. Section 5-1-301(5), C.R.S. (1992).

Section 5-1-301(5)(c) simply refers to "[e]scrows for future payments of taxes and insurance[.]" Unlike section 5-1-301(5)(a) which lists as closing costs "[f]ees or premiums for title examination, title insurance, or similar purposes including

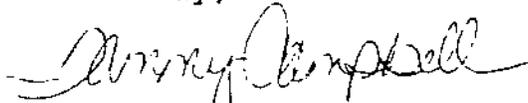
surveys," the escrow account provision makes no such allowance for similar fees.

Colorado law is based upon the Federal Truth in Lending Act and Regulation Z. Regulation Z section 226.4(c)(7)(iv) excludes from the finance charge "[a]mounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge." Recent amendments to the Federal Reserve Board's Official Staff Commentary make it clear that tax service fees are finance charges. "[A] fee for one or more determinations during the loan term of the current tax lien status or flood insurance requirements is a finance charge regardless of whether the fee is imposed at closing, or when the service is performed." Comment 4(c)(7)-3. Only tax service fees charged in connection with the initial decision to grant credit may be excluded from the finance charge.

Therefore, it is the Administrator's opinion that the tax service fees in question are not a permitted additional charge under the UCCC. This conclusion should not be construed to mean that such a fee may not be charged to consumers. It simply means that the fee will be considered to be a part of the finance charge for rate calculation purposes and must be disclosed to the consumer as such.

If you have any questions regarding this matter, feel free to contact our office.

Sincerely,



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