

Government of the District of Columbia

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April 2, 1987

OPINION OF THE CORPORATION COUNSEL

SUBJECT: Advance Payments of Interest under
the Real Property Wet Settlement Act

The Honorable John Ray
Council of the District of Columbia
District Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Councilmember Ray:

This is in reply to your request, dated March 23, 1987, for advice concerning the Real Property Wet Settlement Act of 1986, effective February 24, 1987 (D.C. Law 6-186; to be codified at D.C. Code § 45-2801 et seq. (1987 Supp.) (the "act")). You ask our opinion on whether the act would prohibit the collection of "odd-days' interest" once loan funds have been disbursed. For the reasons stated below, it is my opinion that the act does not prohibit such a collection.

Your question arises from the following circumstances. Prior to enactment of D.C. Law 6-186, regular monthly payments on most real property mortgages that were closed after the first day of a month were scheduled to begin on the first day of the month following the first full calendar month after closing. For example, if a particular closing occurred on March 15, the first payment, covering principal and interest for the month of April was due on May 1. Interest for so-called "odd days", the number of days between closing on March 15 and the beginning of the first full month, April 1, was traditionally collected at closing.

In order to ascertain the effect that the act may have on the collection of "odd-day's interest" it is necessary to look at the wording of the act and its legislative history.

Section 4 of the act reads as follows:

Sec. 4. Duties of lender. A lender shall, at or before loan closing, cause disbursement of loan funds to a settlement agent. A lender shall not receive or charge any interest on a loan until disbursement of loan funds and loan closing have occurred, and shall not require payment of any interest in advance. For purposes of this section, the term "interest" means any compensation directly or indirectly imposed by a lender for the extension of credit for the use or forbearance of money as defined in section 28-3311 of the District of Columbia Code, except that for purposes of this section, the term "interest" shall not include any loan fee, origination fee, service and carrying charge, investigator's fee, or point under section 28-3301(e) of the District of Columbia Code.

I have examined the definition of the word "interest" and am of the view that "odd-days' interest" is "interest" because it is compensation directly or indirectly imposed by the lender for the extension of credit for the use or forbearance of money, as defined in D.C. Code § 28-3311, and because it is not a "loan fee, origination fee, service and carrying charge, investigator's fee, or point under section 28-3301(e) of the District of Columbia Code." The second sentence of section 4 prohibits a lender from receiving or charging "any interest on a loan until disbursement of loan funds and loan closing have occurred." The underlined terms are given the following meanings in sections 2(4) and (6) of the act:

"Disbursement of loan funds" means the delivery of loan funds by a lender to a settlement agent. . .

. . .

"Loan closing" means that time agreed upon by a borrower and a lender when the execution of the loan documents by the borrower occurs.

The second sentence of section 4 also provides that a lender "shall not require payment of any interest in advance." Standing alone, this clause would be ambiguous. However, viewed in the context of the legislative history and the scheme of the act, this clause merely reinforces the first clause of the sentence: that is, the lender cannot require payment of interest in advance of executing the loan documents with the borrower and delivering the loan funds to a settlement agent.

The phrase in section 4 of the bill as reported by the Committee^{1/} read: "...and shall not be entitled to collect interest payments until the lender has been without use of the money for at least 30 days." In the legislative session of November 18, 1986, you offered, and the Council approved, an amendment which struck that language and added the current language. The vote and information sheet on this amendment gave the following rationale:

The intent of this amendment is to clarify that lenders shall not require interest payments in advance, but they may require payment of loan fees, origination fees, service and carrying charges, investigator's fees, or points in advance of making the loan money available. [Emphasis supplied.]

Your memorandum dated November 18, 1986, written to Councilmembers as Chairman of the Consumer and Regulatory Affairs Committee regarding the amendment, gives a similar explanation:

At the legislative session this evening, I will move to reconsider Bill 6-60 in order to move the attached amendment. This is necessary to correct a technical error in the bill as approved at second reading. As approved, the bill prevents lenders from collecting points, service charges, and other fees related to a loan in advance of making the loan money available. However, the intent was to prevent advance collection only of interest payments, not the related fees. This amendment makes clear that the related fees may be collected in advance, but interest payments may not. [Emphasis supplied.]

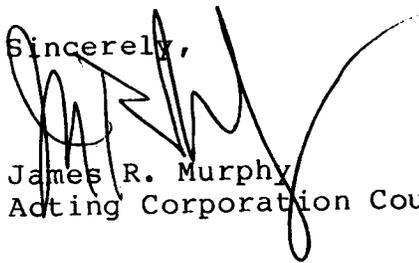
The interpretation of this language in your statements is consistent with the intent of Councilmember Shackleton in introducing the bill, to use the Virginia Wet Settlement Act as a model. Virginia Code § 6.1-2.12 (1950) clearly bars receiving or charging interest only "until disbursement of loan funds and loan closing has occurred."

This interpretation is also consistent with the entire scheme of the act, which does not attempt to enact the sort of broad prohibitions contained in sec. 2 of the Interest Rate Ceiling Amendment Act of 1983, D.C. Law 5-62, as amended, D.C. Code § 28-3301 (1986 Supp.). Rather the scheme is to encourage prompt disbursement of loan funds by prohibiting the lender from doing certain things until he disburses the funds.

^{1/} Report on Bill 6-60, Committee on Consumer and Regulatory Affairs, the "Real Property Wet Settlement Act of 1986", September 25, 1986.

In summary, the act does not prohibit a lender from charging or receiving odd-days' interest once the lender has executed the loan documents with the borrower and delivered the loan funds to a settlement agent.

Sincerely,



James R. Murphy
Acting Corporation Counsel, D.C.