



DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION  
BUREAU OF CONSUMER CREDIT PROTECTION  
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ADVISORY RULING #90A  
MAY 29, 1987

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RE: Supplement to AR # 90; Applicability of §3-311 to Real Estate-Secured Lending in which the Lender Absorbs the Cost of Title Examination.

Several lenders have inquired about the applicability of §3-311 to home equity loan products in which the lender absorbs the cost of title examination. Advisory Ruling # 90 declared that all forms of real estate-secured lending, where the lender required an examination of the borrower's title to the property as a condition of the loan, to be covered by §3-311. The Ruling started with the premise that the cost of the examination would be directly passed on to the consumer, and did not address situations in which the lender absorbed those costs.

It is the Bureau's position that where the cost of the title examination is absorbed by the lender, and there is no direct cost imposed on the borrower, §3-311 does not apply. While §3-311 does not expressly state that it is triggered only when a separate charge is imposed on borrowers for title examination, it is clear from the history of the most recently enacted version of that statute that cost was a major concern. It was considered unfair for the consumer to have to pay a cost associated with the mortgage application process and not have a choice in who would perform that work, particularly when the lack of privacy between borrower and title attorney, (when the borrower was prohibited from choosing the title attorney), could affect the borrower's recourse against that attorney for malpractice in cases of undiscovered title defects.

Such concerns are not present in the typical home equity loan program.

First, there are no direct costs for title update passed on to the consumer. Typically these products are available at no charge to the customer or at a low application charge.

Second, the purpose of the title examination work performed is solely to protect the lender. Unlike the purchase money mortgage situation where both the borrower and lender have an equal interest in assuring themselves of the quality of the seller's title, in the home equity loan situation, the consumer already has title to the property and the title update is solely to assure the lender of his lien priority.

Both of these facts, individually and collectively, serve to distinguish the home equity loan product from the purchase money mortgage product, and for that reason justify different treatment. The Bureau reminds lenders, however, that escalating the price of application fees to cover "free" title work on home equity or other loan products to avoid having to give the §3-311 notice, may be regarded as circumvention of that section. The Bureau will examine allegations of such practices, should they arise, on a case by case basis.

/s/ Robert A. Burgess  
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Superintendent

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