



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

2601 NORTH LAMAR (512) 479-1280
AUSTIN, TEXAS 78705-4207 (214) 263-2016
(713) 461-4074

Writer's Direct Number:

AL ENDSLEY, Commissioner

April 14, 1989 89-1

Mr. Dan L. Nicewander
Gardere and Wynne
Attorneys and Counselors
4100 Thanksgiving Tower
Dallas, Texas 75201

Dear Mr. Nicewander:

By letter dated February 28, 1989, you have indicated that a licensed lender would like to offer an open-end line of credit. The line of credit is to be secured by a deed of trust in non-homestead real estate. You have inquired as to which chapters of the Texas Credit Code, Article 5069, Vernon's Annotated Texas Statutes, would govern such loans.

Chapter 15 of the Code is generally applicable to open-end credit. Article 15.07 provides that such transactions may be secured by collateral as permitted by Chapter 4. Article 4.04(2) prohibits a lender from taking a lien on real estate except upon the recording of an abstract of judgment. An open-end credit plan under Chapter 15 cannot lawfully be secured by real estate. Article 15.10(b) permits a lender to "opt out" of Chapter 15 by contractual agreement. A lender with an open-end line of credit secured by real estate could be accused of a violation of Article 15.07 if his credit agreement did not contain an appropriate language providing that Chapter 15 is not applicable to the transaction.

Chapter 5 governs loans secured by secondary liens on property improved by a dwelling designed for occupancy by four families or less. While Chapter 5 is primarily applicable to purchase money and improvement loans on homesteads it is in no way limited to such transactions. Article 5.02(4) provides a lender the flexibility to have multiple advance and open-end loans. Article 5.04(4) and 5.05(3) indirectly acknowledge that an "open-end account" may be made pursuant to Chapter 5. An open-end line of credit secured by a deed of trust in non-homestead real estate is governed by Chapter 5 if the property is improved as described above and in Article 5.01(1)(a) and is subject to one or more prior liens.

Mr. Dan L. Nicewander
Page Two

April 14, 1989
89-1

In the absence of any regulation by the Credit Code directed specifically at an open-end line of credit secured by a deed of trust representing a first lien or a second lien not within the parameters of Chapter 5, such transaction would be subject to Chapter 1.

Should you have further questions on this matter, please feel free to call me.

Sincerely,



Al Endsley
Commissioner