



STATE OF VERMONT  
DEPARTMENT OF BANKING AND INSURANCE  
MONTPELIER, 05602

BULLETIN No. 11

June 18, 1984

TO: CHIEF EXECUTIVE OFFICER OF THE INSTITUTION ADDRESSED

SUBJECT: PERMITTED CHARGES ON SUBORDINATE LIEN MORTGAGES

As you know, the Depository Institutions Deregulation and Monetary Control Act of 1980 pre-empted provisions of state law "limiting the rate or amount of interest, discount points, finance charges, or other charges" on mortgage loans secured by a first lien on residential real property or a residential manufactured home, 12 U.S.C. § 1735f-7.

Apart from this federal pre-emption of state law, loans made by Vermont lenders are subject to the provisions of Chapter 4 of Title 9, V.S.A.. Therefore such loans shall be based on the actuarial method of interest calculation, in accordance with 9 V.S.A. § 41a(d), which further specifies that, "Interest shall not be paid, deducted or added to principal in advance".

The Department of Banking and Insurance takes the position that points, whether labeled as such or disguised as other fees or charges, are prepaid interest and therefore prohibited by 9 V.S.A. § 41a(d) for loans not subject to federal pre-emption. Only fees authorized under 9 V.S.A. § 42, including Regulation 79-1, as amended 12/15/80 may be charged.

It has come to the attention of the Department that some lenders have indicated they are charging points or assessing other charges not specifically authorized on subordinate lien mortgages secured by owner-occupied dwellings of two units or less. The Department finds no legal basis for this action and such practice should cease immediately.

Any questions pertaining to the above should be directed to Dennis R. Ellingson, Deputy Commissioner of Banking.

Sincerely,

A handwritten signature in black ink, appearing to read "George A. Chaffee".

George A. Chaffee  
Commissioner