

Oklahoma Law Review

Volume 34 | Number 1

1-1-1981

Real Property: Usurious Interest Rates in Oklahoma Real Estate Transactions

Penny L. Hestand

Follow this and additional works at: <https://digitalcommons.law.ou.edu/olr>



Part of the [Law Commons](#)

Recommended Citation

Penny L. Hestand, *Real Property: Usurious Interest Rates in Oklahoma Real Estate Transactions*, 34 OKLA. L. REV. 184 (1981),
<https://digitalcommons.law.ou.edu/olr/vol34/iss1/22>

This Note is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in Oklahoma Law Review by an authorized editor of University of Oklahoma College of Law Digital Commons. For more information, please contact Law-LibraryDigitalCommons@ou.edu.

tween the parties. Again, that problem has been remedied by the 1977 statute.

In the *Backus* case section 10 was held to violate the supremacy clause of the Federal Constitution in that it frustrated the full effectiveness of the Federal Natural Gas Act.⁹¹ In that case, the gas to be tapped was in interstate commerce, which gave rise to federal jurisdiction under the Natural Gas Act. As long as the production, transmission pipeline, and use are all within the state of Oklahoma, these activities are intrastate in nature and therefore no argument could be made in support of a violation of the supremacy clause.

Conclusion

“Preferred use” regulation may become more prevalent in future years because of dwindling supplies of and increased demands for valuable natural resources. Although it is difficult to determine which uses of a resource are superior and which uses are inferior, it is a task that needs to be undertaken to insure that the resources that are available are utilized in the most efficient and the least wasteful manner. Natural gas is an efficient and reliable source of energy for the operation of irrigation pumps. The irrigation of the arid portions of Oklahoma is necessary in order to preserve agricultural communities. This kind of regulation must be upheld because it is essential to the state’s economy, as well, and it provides an opportunity for the state to become a leader in the conservation of natural resources. Oklahoma has long been recognized as a national leader in setting trends for the regulation of the oil and gas industry and should now take steps to insure that oil and gas is used in a manner that best benefits the public interest.

Barbara L. Graham

Real Property: Usurious Interest Rates in Oklahoma Real Estate Transactions

The dramatic increases in the prime interest rate¹ across the country have focused considerable attention on the maximum loan finance charges

⁹¹ See notes 72-76 and accompanying text *supra*.

¹ The Oklahoma version of the Uniform Consumer Credit Code (UCCC) does not refer to the “interest rate” in the sections dealing with the consumer loan (§ 3-104 and § 3-105), consumer related loan (§ 3-602), or other loans (§ 3-605). Rather, the UCCC refers to the “loan finance charge.” 14A OKLA. STAT. § 3-109 (1971) defines loan finance charge as follows:

“(1) ‘Loan finance charge’ means the sum of

“(a) all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges, which are applicable: interest or any amount payable under a point, discount, or other system of charges, however denominated, premium or other charge for any guarantee or insurance protecting the lender against the debtor’s default or other credit loss; and

“(b) charges incurred for investigating the collateral or credit worthiness of the debtor

permissible in real estate transactions under state law. In any commercial or residential loan, the question may arise as to whether the rate of interest is usurious.² Thus, the purpose of this note is to review some of the provisions of the Oklahoma version of the Uniform Consumer Credit Code (UCCC) as set forth in Title 14A of the Oklahoma Statutes³ and to examine the maximum permissible rate of interest for residential and commercial loans under Oklahoma law. The scope of this note will be limited to transactions involving loans⁴ secured by an interest in land.⁵

Prior to September, 1968, the Oklahoma constitution fixed the legal rate of interest at 6% and the contract rate of interest at 10%.⁶ On September 17, 1968, article 14, section 2 of the Oklahoma constitution was amended, granting the legislature the authority to define "interest" and to fix the maximum rates of interest. The amendment provides that in the absence of legislation fixing the maximum rates of interest, all contracts for greater than 10% per annum shall be deemed usurious. The amendment fur-

or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable unless the lender had no notice of the charges when the loan was made. The term does not include charges as a result of default, additional charges (Section 3-202), delinquency charges (Section 3-203), or deferral charges (Section 3-204).

"(2) If a lender makes a loan to a debtor by purchasing or satisfying obligations of the debtor pursuant to a lender credit card or similar arrangement, and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the loan finance charge."

² Technically, since the Oklahoma legislature has acted to make Oklahoma statutory law applicable rather than the Oklahoma constitution, the question for consideration is not whether a transaction is usurious, but rather whether the transaction exceeds the maximum permissible rate of interest under state law. See text accompanying notes 8 and 9, *supra*.

³ 14A OKLA. STAT. §§ 1-101 to 9-103 (1971).

⁴ Article 2 applies to consumer credit sales and article 3 applies to loans. 14A OKLA. STAT. § 3-106 (1969) defines loan as follows:

"(1) 'Loan includes

"(a) the creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;

"(b) the creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately;

"(c) the creation of debt pursuant to a lender credit card or similar arrangement, except that the creation of debt or the forbearance of debt arising from a sale or lease of goods or services pursuant to a lender credit card shall be a 'loan' only as to the issuer of such card and not as to a seller nor a lessor nor any assignee of a seller's right to payment or lessor's right to payment; and

"(d) the forbearance of debt arising from a loan.

"(2) 'Loan' does not include the creation of debt nor the forbearance of debt in connection with a sale or lease of goods or services arising pursuant to a seller credit card as to the issuer of such card, nor a seller, a lessor or any assignee of a seller's or lessor's right to payment, nor otherwise."

⁵ This note will focus on transactions involving loans secured by an interest in land rather than on consumer credit sales. For a discussion of consumer credit sales see Note, *Consumer Credit Sales and the Oklahoma Uniform Consumer Credit Code*, 6 TULSA L.J. 20 (1969).

⁶ See Baggett, "The Oklahoma Version of the Uniform Consumer Credit Code," *Commentary to 14A OKLA. STAT.* (1972), at 299-300.

ther states that if no rate of interest is agreed upon in the contract, the rate of interest shall not exceed 6% per annum.⁷

Subsequently, the Oklahoma legislature adopted a modified version⁸ of the Model Uniform Consumer Credit Code as promulgated by the National Conference of Commissioners on Uniform State Laws (hereafter referred to as the Model Act) which became effective on July 1, 1969. The effect of the passage of the UCCC was to repeal all existing loan rate ceilings.⁹ The provisions of the UCCC reflect a complete legislative treatment that fixes the maximum rates of interest for all credit transactions in Oklahoma.¹⁰ Thus, the first proviso of the constitutional amendment fixing the maximum rate of interest at 10% in the absence of legislation is rendered inapplicable because of the enactment of the UCCC.¹¹

The classification of a loan as residential or commercial does not determine the interest rate applicable to the transaction under the UCCC. The amount of interest that may be charged for a particular real estate transaction is based on the determination of whether the transaction falls within one of the four categories of the "consumer loan,"¹² constitutes a "consumer related loan,"¹³ or falls within the "other loan"¹⁴ classification. Con-

⁷ OKLA. CONST. art. 14, § 2. See also Baggett, "The Oklahoma Version of the Uniform Consumer Credit Code," Commentary to 14A OKLA. STAT. (1972), at 299-302.

⁸ The Oklahoma version of the UCCC is substantially the same as the UCCC promulgated by the National Conference of Commissioners on Uniform State Laws. For a discussion of the Oklahoma amendments, see Miller & McCaffrey, *Oklahoma's Adventitious Amendments to the UCCC: The Experience One Year Later*, 42 OKLA. B.A.J. q-30 (1971).

⁹ Barnes v. Helfenbein, 548 P.2d 1014, 1016 (Okla. 1976). The UCCC contains a specific repealer section which provides that "other laws and parts of laws in conflict therewith are hereby repealed." 14A OKLA. STAT. § 9-102 (1971). See Standard Co. Dairy v. Allen, 188 Okla. 287, 289, 108 P.2d 164, 167 (1940). Furthermore, it appears that 15 OKLA. STAT. § 266 (1961) was repealed by implication. See also Meyers, *Real Estate Transactions, Rates and the Uniform Consumer Credit Code*, 23 OKLA. L. REV. 263, 271 (1970).

¹⁰ Barnes v. Helfenbein, 548 P.2d 1014, 1017 (Okla. 1976).

¹¹ *Id.*

¹² The "consumer loan" can be divided into four distinct categories: (1) the "diluted loan," (2) the "supervised loan," (3) the full-blown "consumer loan," and (4) the "excluded loan." The factors that distinguish each of the four categories and the rate of interest applicable to each category are discussed in the text under the heading of *Consumer Loans*.

¹³ 14A OKLA. STAT. § 3-602 (1971) establishes the rate of loan finance charge for "Consumer Related Loans" as follows:

"(1) A 'consumer related loan' is a loan which is not subject to the provisions of this Act applying to consumer loans and in which the principal does not exceed Forty Thousand Dollars (\$40,000.00), if

"(a) the debtor is a person other than an organization; or

"(b) the debt is secured primarily by a security interest in a one or two family dwelling occupied by a person related to the debtor.

"(2) With respect to a consumer related loan, including one made pursuant to a revolving loan account, the parties may contract for the payment of a loan finance charge not in excess of eighteen percent (18%) per year calculated according to the Actuarial Method on the unpaid balance of the principal."

The dollar amounts in § 3-602 are subject to adjustment under § 1-106.

¹⁴ 14A OKLA. STAT. § 3-605 (1971) describes the loan finance charges for "Other Loans" in the following manner: "With respect to a loan other than a consumer loan or a consumer

sequently, a careful examination of the four categories of the consumer loan, as well as the "consumer related loan" and "other loan" classifications, is necessary to determine the maximum permissible rate of interest that may be charged in any real estate transaction under the UCCC.

Computing the Loan Finance Charge

Loan finance charges are defined as all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit.¹⁵ The statutory definition includes (1) interest; (2) amounts paid under a point, discount, or other system of charges; (3) insurance premiums protecting the lender against the debtor's default or other credit loss; (4) charges incurred for investigating the collateral or credit-worthiness of the debtor; and (5) commission or brokerage charges for obtaining the credit.¹⁶ The term "loan finance charge" specifically excludes¹⁷ charges resulting from default, additional charges,¹⁸ delinquency charges,¹⁹ or deferral charges.²⁰

Consumer Loans

The "consumer loan" can be divided into four distinct categories: (1) the "diluted loan," (2) the "supervised loan," (3) the full-blown "consumer loan," and (4) the "excluded loan."²¹ As previously discussed, the determination of whether a particular transaction falls into one of the four categories of the "consumer loan" or constitutes a "consumer-related loan" or "other loan" affects the maximum permissible rate of interest for any residential or commercial real estate loan under Oklahoma law. Thus, each of the four categories of the consumer loan, together with an analysis of its distinguishing factors and applicable maximum rate of interest, will be considered.

related loan, the parties may contract for the payment by the debtor of any loan finance charge, not in excess of the rate of loan finance charge specified in Section 5-107(2)." 14A OKLA. STAT. § 5-107(2) (1971) provides: "If it is shown that an extension of credit was made at an annual rate exceeding forty-five percent (45%) calculated according to the Actuarial Method and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect extensions of credit or to punish the nonrepayment thereof, there is prima facie evidence that the extension of credit was unenforceable under subsection (1), unless such rate was otherwise lawful under any provision or provisions of this Act."

¹⁵ 14A OKLA. STAT. § 3-109(1)(a) (1971). See note 1, *supra*.

¹⁶ See note 1 *supra*.

¹⁷ 14A OKLA. STAT. § 3-109(1)(b) (1971).

¹⁸ See 14A OKLA. STAT. § 3-202 (1971).

¹⁹ See 14A OKLA. STAT. § 3-203 (1971).

²⁰ See 14A OKLA. STAT. § 3-204 (1971).

²¹ The UCCC utilizes the terminology of the "consumer loan" and the "supervised loan," but does not utilize the phrases "diluted loan," "full-blown consumer loan," and "excluded loan." However, because the concepts are clearly present, they have been so labeled for the sake of clarity in the discussion in the text.

The statutory standards to be utilized in determining whether a loan²² is a full-blown "consumer loan" (hereinafter referred to as a consumer loan) are delineated by 14A Oklahoma Statutes § 3-104 (Supp. 1980) and by 14A Oklahoma Statutes § 3-105 (Supp. 1980).²³ To ascertain whether a loan is a consumer loan, a determination must first be made as to whether the loan is excepted from the category of consumer loans by definition as a "loan primarily secured by an interest in land" under section 3-105.²⁴ To be automatically exempted from the category of a "consumer loan" under section 3-105, the value of the collateral must be substantial in relation to the amount of the loan and the loan finance charge must *not* exceed 13% per annum.²⁵

If a transaction is not automatically excepted under section 3-105, then a determination must be made as to whether the remaining criteria set forth in section 3-104 have been met. Section 3-104 provides that in order for a loan primarily secured by an interest in land to be a "consumer loan," (1) it must be a loan²⁶ made by a person regularly engaged in the business of making loans;²⁷ (2) the debtor must be a person other than an organization;²⁸ (3) the debt must be incurred primarily for personal, family, household, or agricultural purposes;²⁹ and (4) the debt must be either payable in installments or a loan finance charge must be made.³⁰ Thus, if all the requirements of section 3-104 are met and the loan is not exempted pursuant to section 3-105, including the annual percentage rate exceeding 13%, the loan is a "consumer loan" subject to an 18% maximum rate of loan finance charge under Section 3-508A(2) of Title 14A of the Oklahoma Statutes.³¹

²² For the UCCC definition of a loan, see note 4, *supra*.

²³ See note 4, *supra*.

²⁴ *Barnes v. Helfenbein*, 548 P.2d 1014, 1017 (Okla. 1976).

²⁵ *Id.*

²⁶ See note 4, *supra*.

²⁷ 14A OKLA. STAT. § 3-104 (Supp. 1980). A person who had made infrequent small loans in the past was not a person "regularly engaged in the business of making loans." *Barnes v. Helfenbein*, 548 P.2d 1014, 1015 (1976).

²⁸ 14A OKLA. STAT. § 3-104(1) (Supp. 1980). 14A OKLA. STAT. § 1-301(11) (1971) provides: "'Organization' means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association."

²⁹ 14A OKLA. STAT. § 3-104(2) (Supp. 1980).

³⁰ 14A OKLA. STAT. § 3-104(3) (Supp. 1980).

³¹ 14A OKLA. STAT. § 3-508A (1) and (2) provide:

"(1) With respect to a supervised loan, including a loan pursuant to a revolving loan account, a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

"(2) The loan finance charge, calculated according to the Actuarial Method, may not exceed the equivalent of the greater of either of the following:

"(a) the total of

"(i) thirty percent (30%) per year on that part of the unpaid balances of the principle which is Four Hundred Eighty Dollars (\$480.00) or less;

"(ii) twenty-one percent (21%) per year on that part of the unpaid balance of the principal which is more than Four Hundred Eighty Dollars (\$480.00) but does not exceed One Thousand Six Hundred Dollars (\$1,600.00); and

The "diluted loan" is a loan that meets the definition of a "consumer loan" in section 3-104 and secures an interest in land but does not exceed the annual percentage rate of 13% under section 3-105. As such, the diluted loan is not made subject to the UCCC³² except with respect to disclosure³³ and debtor's remedies.³⁴ The diluted loan may include either a first or second mortgage securing an interest in land but may not be utilized to build or acquire real property. If a loan meets all of the qualifications of the diluted loan, but the annual percentage rate exceeds 13%, then the loan is a "supervised loan"³⁵ rather than a diluted loan.

The Official Comments to the Model Act indicate that sections 3-104 and 3-105 are to be construed together to exclude the classic home mortgage from all provisions of the UCCC except those on disclosure and debtor's remedies.³⁶ Consistent with the intent of the Model Act, the Oklahoma legislature has sought to prevent the classic home mortgage from falling within the definition of a consumer loan as set forth in sections 3-104 and 3-105. Consequently, as the interest rates have fluctuated in the past year, the Oklahoma legislature has attempted to combat the problem by changing the annual percentage rate in section 3-105 from 10% to 13% on May 30, 1979,³⁷ from 13% to 18% on March 26, 1980,³⁸ and from 18% to 13% on April 15, 1980.³⁹ When the Oklahoma legislature brought the annual percentage rate back down to 13% on April 15, 1980, it created the "excluded loan" to insure that the classic home mortgage was not subject to the provisions of the UCCC except with respect to disclosure and debtor's remedies.⁴⁰ Thus, the

"(iii) fifteen percent (15%) per year on that part of the unpaid balance of the principal which is more than One Thousand Six Hundred Dollars (\$1,600.00); or
 "(b) eighteen percent (18%) per year on the unpaid balances of the principal." Section 3-508A is subject to changes in the dollar amounts used according to 14A OKLA. STAT. § 1-106 (1969), as amended by House Bill 1607 on Apr. 15, 1980.

³² 14A OKLA. STAT. § 3-105 (Supp. 1980).

³³ 14A OKLA. STAT. § 3-301 (1971).

³⁴ 14A OKLA. STAT. § 5-201 (1971).

³⁵ 14A OKLA. STAT. § 3-501 (Supp. 1980), as amended by House Bill No. 1607, on Apr. 15, 1980.

³⁶ 7 U.L.A. Consumer Credit Code, Official Comment to 3.105.

³⁷ See 14A OKLA. STAT. § 3-105 (Supp. 1980). However, in light of the Oklahoma constitution provision which sets the maximum rate at 10% per annum (absent legislative action), it appears that the Oklahoma legislature intended to exclude the classic home mortgage from the category of consumer loans, rather than all of the provisions of the UCCC. The drafters of the Model Act did intend to include as "consumer loans" high rate loans which are characteristic of the second mortgage loan business. Furthermore, the Official Comments to the Model Act provide that since the ordinary home mortgage invariably has a loan finance charge below 10% (13% under the updated Oklahoma amendments), the exclusion in section 3-105 has been based on the amount of the loan finance charge.

³⁸ See 14A OKLA. STAT. § 3-105 (Supp. 1980), as amended by Okla. Sess. Laws 1980, c. 32 § 1, eff. Mar. 26, 1980.

³⁹ See 14A OKLA. STAT. § 3-105 (Supp. 1980), as amended by Okla. Sess. Laws 1980, c. 122, § 3, eff. Apr. 15, 1980.

⁴⁰ See 14A OKLA. STAT. § 1-202(5) (1971), as amended by Okla. Sess. Laws 1980, c. 122, § 1, eff. Apr. 15, 1980.

annual percentage rate of 13% in section 3-105 should not fluctuate in the future as it has in the past.

The "supervised loan"⁴¹ is a loan that meets the statutory definition of a consumer loan in sections 3-104 and 3-105, secures an interest in land, and exceeds the annual percentage rate of 13%.⁴² The supervised loan is identical to the diluted loan in that both must meet the statutory definition of a consumer loan and secure an interest in land, but while the annual percentage rate in the diluted loan may not exceed 13% per annum, the annual percentage rate of a supervised loan may exceed 13%. Because the supervised loan is by definition a consumer loan, then the supervised loan would be subject to a maximum permissible rate of interest of 18% per annum.⁴³

An "excluded loan"⁴⁴ is a first mortgage loan made to enable the debtor to build or purchase a residence or to refinance a loan when it is made by a lender whose loans are supervised by an agency of the United States or made by a Federal Housing Administration approved mortgage. The excluded loan is not made subject to the UCCC except with respect to disclosure and debtor's remedies. The maximum permissible rate of interest for the excluded loan, like the "other loan," is 45% per annum.⁴⁵

Consumer Related Loans

The UCCC⁴⁶ created the category of "consumer related loans" for certain transactions that do not otherwise fall within any of the provisions relating to "consumer loans."⁴⁷ The intent was "to provide some protection for the borrower in what might be termed the quasi-consumer, quasi-commercial transaction."⁴⁸

A consumer related loan may be involved when the transaction is *not* personal, family, household, or agricultural;⁴⁹ when the principal of the loan

⁴¹ 14A OKLA. STAT. § 3-501 (Supp. 1980), *as amended by* Okla. Sess. Laws 1980, c. 122, § 4, eff. Apr. 15, 1980.

⁴² *Id.* Section 3-501 defines a "supervised loan" as a consumer loan in which the annual percentage rate exceeds 10% per annum; however, when section 3-501 is read in light of sections 3-104 and 3-105, it becomes clear that the legislature intended to except from the definition of a supervised loan all loans securing an interest in land which do not exceed the annual percentage rate of 13%. Thus, when an interest in land is involved, loans with an annual percentage rate that does not exceed 13% would be classified as a diluted loan, whereas loans with an annual percentage rate in excess of 13% would be classified as a supervised loan.

⁴³ 14A OKLA. STAT. § 3-508A(2) (1971).

⁴⁴ 14A OKLA. STAT. § 1-202(5) (1971), *as amended by* Okla. Sess. Laws 1980, c. 122, § 1, eff. Apr. 15, 1980.

⁴⁵ *See* 14A OKLA. STAT. § 1-202(5) (1971), *as amended by* Okla. Sess. Laws. 1980, c. 122, § 1, eff. Apr. 15, 1980, 14A OKLA. STAT. § 3-605 (Supp. 1980).

⁴⁶ 14A OKLA. STAT. § 3-602 (1971). *See* note 13, *supra*.

⁴⁷ 14A OKLA. STAT. § 3-602(1) (1971).

⁴⁸ *Stricklin v. Investors Syndicate Life Ins. & Ann. Co.*, 391 F. Supp. 246, 248 (W.D. Okla. 1975).

⁴⁹ A "consumer loan" must be incurred primarily for a personal, family, household, or agricultural purpose under section 3-104(2), whereas no similar requirement is made under the "consumer related loan" in section 3-602.

does *not* exceed \$40,000;⁵⁰ or when credit is extended by one who is *not* regularly engaged in the business of making loans.⁵¹ The transaction falls within the statutory definition of a "consumer-related loan" if the loan is not subject to the provisions of the UCCC applying to "consumer loans," it is in an amount of \$40,000 or less, and "(a) the debtor is a person other than an organization;⁵² or (b) the debt is secured primarily by a security interest in a one or two family dwelling occupied by a person related to the debtor."⁵³ The maximum rate chargeable under section 3-602 for consumer-related loans is 18%.⁵⁴

Other Loans

If a loan is neither a "consumer loan" nor a "consumer-related loan," it falls into the category of "other loans."⁵⁵ Sections 3-605⁵⁶ and 5-107(2)⁵⁷ have established the maximum permissible rate of interest for "other loans" to be 45% per annum. According to the Oklahoma Supreme Court, the rationale as stated in the Official Comment to section 3-605 of the Model Act is that there is no need for usury limitations in sophisticated business transactions.⁵⁸

The Oklahoma Supreme Court in *Barnes v. Helfenbein*⁵⁹ considered the question of whether a \$600,000 loan, made by a person who was not regularly engaged in the business of making loans, at a rate of 38.5% fell within the

⁵⁰ The "consumer related loan" under section 3-602 is a loan in which principal does not exceed \$40,000, whereas under section 3-104(4) the "consumer loan" arises when *either* the principal does not exceed \$40,000 or the debt is secured by an interest in land. In *Stricklin v. Investors Syndicate Life Ins. & Annuity Co.*, 391 F. Supp. 246, 248, 249 (W.D. Okla. 1975), the Oklahoma court held two loans in the amount of \$240,000 and \$300,000 made to the borrowers for the construction of two apartment complexes did not constitute consumer related loans for the reason, among others, that section 3-602 is limited to transactions involving no more than a \$25,000 principal. *See also Barnes v. Helfenbein*, 548 P.2d 1014, 1018 (Okla. 1976). The original version of section 3-602 and section 3-104(4) provided for dollar amounts of \$25,000 rather than \$40,000. However, a number of sections of the UCCC are adjusted periodically under section 1-106. *See* 14A OKLA. STAT. § 1-106 (1969), *as amended by* Okla. Sess. Laws 1980, c. 122, § 5, *eff.* Apr. 15, 1980.

⁵¹ The "consumer loan" under section 3-104 must be made by a person regularly engaged in the business of making loans. No similar requirement is set forth in the statutory language of section 3-602 which governs "consumer related loans."

⁵² *See* note 28, *supra*, for the UCCC definition of an organization.

⁵³ 14A OKLA. STAT. § 3-602(1)(a), (b) (1971).

⁵⁴ 14A OKLA. STAT. § 3-602(2) (1971).

⁵⁵ *Barnes v. Helfenbein*, 548 P.2d 1014, 1018 (Okla. 1976). *See also* 14A OKLA. STAT. § 3-605 (1971).

⁵⁶ 14A OKLA. STAT. § 3-605 (1971), entitled "Loan finance charge for other loans" provides: "With respect to a loan other than a consumer loan or a consumer related loan, the parties may contract for the payment by the debtor of any loan finance charge, not in excess of the rate of loan finance charge specified in Section 5-107(2)."

⁵⁷ 14A OKLA. STAT. § 5-107(2) (1971). *See* note 14, *supra*.

⁵⁸ *Barnes v. Helfenbein*, 548 P.2d 1014, 1019-20 (Okla. 1976).

⁵⁹ 548 P.2d 1014 (Okla. 1976).

category of "other loans" under section 3-605. In *Barnes* the borrower's indebtedness was secured by a real estate mortgage covering the borrower's land not used for homestead or agricultural purposes. When the borrower defaulted in payment of the note, the lender instituted an action for payment of the note and foreclosure of the real estate mortgage. The court noted that the initial requirement of the "consumer loan" was not satisfied because the lender was not regularly engaged in the business of making loans.⁶⁰ Furthermore, the loan failed to satisfy the requirement that the debt be incurred for a personal, family, household, or agricultural purpose.⁶¹ Thus, the court ruled that the transaction was not a consumer loan under section 3-104.⁶² Next, the court pointed out that because the principal amount of the loan exceeded \$25,000, the loan did not meet the criteria for a "consumer related loan" set forth in section 3-602.⁶³ Thus, the court held that the loan in question fell into the category of "other loans," which are subject to a maximum permissible rate of 45% interest per annum.⁶⁴

Debtor's Remedies for Violations of the Maximum Rates

The debtor is not obligated to pay any charges, including maximum annual percentage interest charges, in excess of the amount allowed under the applicable section of the UCCC. Any charges, including but not limited to charges in excess of the maximum permissible annual percentage interest rates, that a creditor is not entitled to keep are subject to an action by the debtor. For example, if the debtor has paid an annual percentage rate in excess of that allowed by statute, he has a right to a refund.⁶⁵ If a refund is refused or if the creditor charged an annual percentage interest rate in deliberate violation of or in reckless disregard for the UCCC, the debtor can recover a penalty not exceeding the greater of the amount of the annual percentage rate or ten times the amount of the excess charge.⁶⁶

⁶⁰ *Id.* at 1018.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ 14A OKLA. STAT. § 5-202(3) (1971) provides: "A debtor is not obligated to pay a charge in excess of that allowed by this Act, and if he has paid an excess charge he has a right to a refund. A refund may be made by reducing the debtor's obligation by the amount of the excess charge. If the debtor has paid an amount in excess of the lawful obligation under the agreement, the debtor may recover the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against debtors arising from the debt."

⁶⁶ 14A OKLA. STAT. § 5-202(4) (1969) provides: "If a debtor is entitled to a refund and a person liable to the debtor refuses to make a refund within a reasonable time after demand, the debtor may recover from that person a penalty in an amount determined by a court not exceeding the greater of either the amount of the credit service or loan finance charge or ten times the amount of the excess charge. If the creditor has made an excess charge in deliberate violation of or in reckless disregard for this Act, the penalty may be recovered even though the creditor has refunded the excess charge. No penalty pursuant to this subsection may be recovered if a

Conclusion

Since the Oklahoma legislature has acted, thereby making the Oklahoma version of the UCCC applicable rather than the Oklahoma constitution, the question that arises in any real estate transaction is not whether a particular transaction is usurious but rather whether the transaction exceeds the maximum permissible rate of interest under state law. The "diluted loan" by definition may not exceed an annual percentage rate of 13%. The "supervised loan" is by definition a "consumer loan" first and as such may not exceed an annual percentage rate of 18%. The "excluded loan," like the "other loan," is subject to a maximum annual percentage rate of 45%. Both the "consumer loan" and the "consumer related loan" may not exceed an annual percentage rate of 18%. In light of the severe penalties for exceeding the maximum permissible rates of interest in any loan secured by an interest in land, Oklahoma attorneys should carefully consider the statutory language to avoid violations of the UCCC.

Penny L. Hestand

court has ordered a similar penalty assessed against the same person in a civil action by the Administrator (Section 6-113). With respect to excess charges arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two (2) years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one (1) year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made."