

N.D.A.G. Letter to Collins (Feb. 2, 1987)

February 2, 1987

Ms. Jet Collins
Administrative Assistant
Credit Review Board
State Capitol
Bismarck, ND 58505

Dear Ms. Collins:

Thank you for your letter of January 23, 1987, concerning three questions asked by the Credit Review Board. I will respond to them in the order they are presented in the letter.

1. Can the Credit Review Board issue an interest subsidy on a contract for deed?

I find nothing in the statute or rules which would prohibit the Credit Review Board from issuing an interest subsidy on contract for deed financing provided all the requirements of N.D.C.C. Ch. 6-09.10 and N.D. Admin. Code Ch. 18.5-02-01 are met.

N.D.C.C. § 6-09.10-05 states as follows:

6-09.10-05. INTEREST RATE BUYDOWNS BY THE BOARD.

1. If the board, or its authorized agent, is unable to mediate a settlement in the negotiation of a farmer's debt, the board may approve the purchase, refinancing, or redemption of the farmer's home-quarter. If the board approves the purchase, refinancing, or redemption of the homequarter, it shall subsidize the interest rate paid by the farmer after credit has been obtained by the farmer from any governmental or private financial institution or agency.
2. The board may only approve an interest subsidy if the farmer has the financial ability to meet all payments and financial responsibilities, including the payment of principal and interest on loans subsidized under this chapter.

(Emphasis supplied.)

Further, N.D.C.C. § 6-09.10-07 states the specifics of the interest buydown portion of N.D.C.C. Ch. 6-09.10. I see nothing in that section which restricts the interest buydown to the mortgage situation.

Additionally, I see nothing in N.D. Admin. Code § 18.5-02-01-04 which would prohibit the use of interest subsidies on contract for deed financing. N.D. Admin. Code § 18.5-02-01-04 provides additional factors and criteria to be considered by the Credit Review Board in making a determination as to whether interest subsidies shall be provided.

It is true that the language of N.D.C.C. Ch. 6-09.10 seems to rely on the traditional loan/mortgage method of purchase or refinancing. However, it should be noted that the contract for deed or installment land contract is a traditional mortgage substitute which has the identical economic function -- the financing by the seller of the unpaid portion of the real estate purchase price. Of course, the significant difference in an installment land contract is that the vendee normally takes possession and makes monthly installment payments of principal and interest until the principal balance is paid off, but the vendor retains legal title until the final payment is paid, at which time full title is conveyed to the vendee. Such contracts can even be amortized over time periods approaching the amortization period of a mortgage. See G. Nelson and D. Whitman, Real Estate Finance Law, §3.26 (2d Ed. 1985).

Further, the North Dakota Supreme Court has stated:

The relationship between the installment vendor and his purchaser is essentially one of secured creditor and debtor and, for all practical purposes, the purchaser is regarded as owner and generally has the right to possess and use the property. . . . (Citation omitted.) The vendor holds legal title as security for the payment of the entire purchase price.

(Citation omitted.)

The contract for deed entered into by Ira and his parents is an executory installment contract for purchase. . . .

Zent v. Zent, 281 N.W.2d 41 (N.D. 1979).

Certainly, although not technically a loan, a contract for deed is a forbearance; and it is treated like a mortgage in many respects. In any case, the farmer owed a debt and in settlement of that debt is now being offered the possibility to purchase the home-quarter by means of a contract for deed. It is my opinion that the Credit Review board can issue an interest subsidy on the contract for deed to effect that purchase.

2. Can a person be practicing law without a license even though remuneration is accepted?

Whether or not a person has accepted remuneration for advice ("options") given to another person is relatively unimportant in a determination of whether or not that person is engaged in practicing law without a license. A determination of whether a person is

engaged in practicing law without a license is primarily a question of fact, however, upon which this office cannot give a legal opinion.

3. Can the Credit Review Board pay the Department of Agriculture's administrator for his time in administering the Farm Credit Counseling Program?

As I understand it, to implement the provisions of N.D.C.C. Ch. 6-09.10, the Credit Review Board has entered into an agreement with the Farm Credit Counseling Service of the Department of Agriculture for the Farm Credit Counseling Service to provide negotiating services. Essentially, then, the Credit Review Board pays the Farm Credit Counseling Service, pays each district negotiator and other negotiators, and pays authorized costs of the Farm Credit Counseling Service program. What the Department of Agriculture does with the amount paid by the Credit Review Board to the Farm Credit Counseling Service to administer its Farm Credit Counseling Service program is within the discretion of the Department of Agriculture. I see nothing which would prohibit the Department of Agriculture from designating a portion of that payment for the salary of an individual currently working with and being paid by the Agriculture Department who would also have some administrative responsibilities for the Farm Credit Counseling Service program.

Sincerely,

Nicholas J. Spaeth

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