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SPRINGFIELD

August 20, 1979

FILE NO. S-1460

FINANCIAL INSTITUTIONS:
Reverse Annuity and Graduated.
Payment Mortgages

Timothy E. Griffin
Savings and Loan Commissioner
160 North LaSalle
Chicago, Illinois 60604

Dear Commissioner Griffin:

This responds to your request for an opinion as to whether reverse annuity mortgages and graduated payment mortgages may lawfully be granted by State chartered savings and loan associations. I am of the opinion that both types of mortgages are legal in Illinois and that the Savings and Loan Commissioner may authorize State savings and loan associations to grant them.

A reverse annuity mortgage is a loan transaction wherein, as you describe it:

" * * * the mortgage instrument provides for periodic payments to homeowners based upon accumulated equity in their homestead real estate. The loan becomes due either on a specific date or upon occurrence of certain specified events. Interest rates are to be fixed at the time of the loan

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origination. Interest is required to be added on a monthly basis to the principal balance and interest due is computed monthly on that principal balance. * * *

The graduated payment mortgage is:

" * * * a loan transaction wherein the mortgage instrument's scheduled payments begin at a level lower than that of a comparable standard mortgage instrument and gradually rise to a predetermined point, after which they remain constant. The graduation period, rate of increase and the interest rate are fixed at the time of loan origination. Interest requirements are not fully met, which requires that certain amounts of interest are deferred and added to the principal balance on a monthly basis."

You state that the Federal Home Loan Bank Board recently promulgated regulations authorizing federally chartered savings and loan associations and State chartered savings and loan associations whose accounts are insured by the Federal Savings and Loan Insurance Corporation to grant both reverse annuity mortgages and graduated payment mortgages. Illinois chartered savings and loan associations are authorized to make loans "on the security of real estate" (Ill. Rev. Stat. 1977, ch. 32, par. 791). While various lending plans are set forth in section 5-4 (Ill. Rev. Stat. 1977, ch. 32, par. 794), these plans are not exclusive. I am aware of no provision which prohibits Illinois chartered savings and loan associations from entering into these types of loan transactions unless in

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doing so they violate the provisions of "AN ACT in relation to the rate of interest * * *" (Ill. Rev. Stat. 1977, ch. 74, par. 1 et seq.).

The question of whether or not these types of mortgages violate the State usury law arises out of the fact that they both require the mortgagor to pay interest upon interest, a practice which in the past has been declared contrary to this State's public policy. It is unnecessary to decide whether this policy has been changed as a result of Joliet Federal Savings and Loan Ass'n v. Bloomington Loan Co. (1970), 131 Ill. App. 2d 619, because the Illinois Savings and Loan Act clearly exempts from the usury laws the charging of interest upon interest by savings and loan associations in connection with otherwise valid loans. Section 5-10 of the Act (Ill. Rev. Stat. 1977, ch. 32, par. 800) states:

"No interest, premium, or interest on such interest or premium, or charge, which may accrue to an association under the provisions of this Act, shall be deemed to be usurious; and the same may be collected in the same manner as other debts in accordance with the laws of this State."
(Emphasis added.)

It is therefore my opinion that reverse annuity mortgages and graduated payment mortgages are legal under Illinois law by reason of section 1-6(c) of the Illinois

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Savings and Loan Act and that they are not rendered unlawful
by requiring the payment of interest upon interest.

Very truly yours,

A T T O R N E Y G E N E R A L