

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-184703

DATE: APR 30 1976

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MATTER OF:

**James J. Beirs - Real estate expenses for
second mortgage**

DIGEST:

Transferred employee claims reimbursement of finance charges assessed by lending institution in connection with a second mortgage obtained by him as "interim financing" for the purchase of a new residence. Charges made in connection with second mortgages are reimbursable to the same extent as charges made in connection with first mortgages. In view of the prohibition on payment of finance charges contained at Federal Travel Regulations, para. 2-6.2d, those expenses incident to the second mortgage transaction attributable to interest and trust fee charges are for disallowance. Charges for preparation and recording of documents may be reimbursed.

This matter is before us on a request for an advance decision from Mr. Eugene J. Rogers, Finance and Accounting Office of the Department of the Army, North Central Division, Corps of Engineers and concerns the claim of Mr. James P. Beirs, an employee of the Corps of Engineers, for expenses incurred in the purchase of his residence upon transfer of official duty station from Detroit, Michigan, to Chicago, Illinois, in April of 1974.

The record shows that Mr. Beirs purchased his new residence in Wheaton, Illinois, on April 15, 1974, and that he sold the residence at his old official duty station on July 31, 1974. Since the purchase of his residence in Illinois took place before he obtained the proceeds from the sale of his old residence, Mr. Beirs obtained what he refers to as an interim financing loan of \$9,500 from the Wheaton National Bank in Wheaton, Illinois, in order to finance the purchase of his new residence pending the sale of the old residence. Upon the sale of the old residence the interim loan, including the interest charge of \$263.26, was paid in full. In connection with the interim loan, Mr. Beirs was charged a \$55 fee which included a trust fee and a fee for preparation and recording of documents. The total amount of \$318.26 is the subject of Mr. Beirs claim which is before us for consideration.

Preliminary to considering the above issue, we note that when Mr. Beirs settled the loan for the purchase of his residence on April 15, 1974, he incurred expenses totaling \$733.55 which included \$217.55 for legal and related costs, \$51 for state revenue stamps and \$465 for the lending Association's service charge. This latter charge includes expenses for appraisal, credit report, preparation of mortgage documents and attorney fee for reviewing title along with the Association's charge for granting a mortgage loan. No specific amount is attributed to any of these items of expense. The record indicates that the \$733.55 amount claimed less Federal Tax of \$146.71 was paid to Mr. Beirs.

At the time of Mr. Beirs' transfer the applicable regulations governing reimbursable and nonreimbursable expenses connected with the transfer of official duty stations were the Federal Travel Regulations (FTR)(FPMR 101-7, May, 1973). FTR para. 2-6.2.d provides in pertinent part as follows:

"d. Miscellaneous expenses. * * * Interest on loans, points, and mortgage discounts are not reimbursable. Notwithstanding the above, no fee, cost, charge, or expense is reimbursable which is determined to be part of the finance charge under the Truth in Lending Act, Title 1, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System. * * *"

Regulation Z (12 CFR, Part 226.4) referenced in section 2-6.2.d above, provides the following guidance for determining whether a particular charge is a finance charge within the definition thereof contained in section 106 of the Truth in Lending Act.

§226.4 Determination of finance charge.

"(a) General Rule. Except as otherwise provided in this section, the amount of the finance charge in connection with any transaction shall be determined as the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to

or as a condition of the extension of credit, whether paid or payable by the customer, the seller, or any other person on behalf of the customer to the creditor or to a third party, including any of the following types of charges:

"(1) Interest, time price differential, and any amount payable under a discount or other system of additional charges.

"(2) Service, transaction, activity, or carrying charge.

"(3) Loan fee, points, finder's fee, or similar charge.

"(4) Fee for an appraisal, investigation, or credit report.

* * * * *

"(e) Excludable charges, real property transactions. The following charges in connection with any real property transaction, provided they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this part, shall not be included in the finance charge with respect to that transaction:

"(1) Fees or premiums for title examination, abstract of title, title insurance, or similar purposes and for required related property surveys.

"(2) Fees for preparation of deeds, settlement statements, or other documents.

"(3) Amounts required to be placed or paid into an escrow or trustee account for future payments of taxes, insurance, and water, sewer, and land rents.

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"(4) Fees for notarizing deeds and other documents.

"(5) Appraisal fees.

"(6) Credit reports." (Emphasis added).

Under the above guidelines we have held that a service charge or fee, not identified as being in payment of an otherwise allowable expense, is to be considered a finance charge, B-176481, August 11, 1972. Where an itemization of amounts included in the service charge or fee is furnished, excludable charges as defined in subsection 226.4(e), above, may be reimbursed to the extent that they are bona fide, reasonable in amount and not for the purpose of circumventing or evading Regulation Z (12 CFR, Part 226).

Although the record indicates that appraisal costs, credit report, preparation of mortgage documents and attorney fees for reviewing title are allowable items which were included in the \$465 service charge already reimbursed, the portion of the lending Association's service charge which is characterized as its "charge for granting the mortgage loan" is not an allowable item. No portion of the \$465 service charge should have been paid in the absence of an itemization of the specific amounts attributable to the above five items constituting the total charge. In that respect, Mr. Beirs should be requested to provide an itemization of the charges and the administrative office should initiate collection action for that portion which has been erroneously paid.

As to the interest and other charges on the interim financing loan, Mr. Beirs argues that they should be treated differently than charges incurred in connection with mortgage loans. Since the \$318.26 claimed consisted of \$263.26 interest and \$55 trust fee charges and since the nature of this latter fee was not further explained, we contacted the lending institution. We were informally advised that the \$9,500 loan made to Mr. Beirs was secured by assignment of his interest in the property he purchased and that it was in effect a second mortgage against that property. As to the \$55 charge, we were advised that it is further divisible as follows:

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Opening of trust account fees: \$40

Preparation and execution of security document: \$10

Recording of security document: \$5

We have held that expenses incurred in connection with second mortgage transactions are reimbursable to the same extent as expenses incurred in connection with first mortgages insofar as they are reasonable in amount and otherwise allowable under the regulations, provided however that they are not charges assessed to compensate the lender for the high risk involved. See B-166698, May 27, 1969; B-167605, August 21, 1969; and B-183251, May 29, 1975.

In view of our holdings in these decisions and the applicable regulations discussed above we find that the interest paid on the second mortgage of \$263.26 is a nonreimbursable item and that the trust fee of \$40 is for disallowance. The \$10 and \$5 charges, for the preparation and recording of the security instrument respectively, are for allowance.

Paul G. Dembling

For the Comptroller General
of the United States