

Opinion No. 82-21

November 15, 1982

OPINION OF: Jeff Bingaman, Attorney General

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TO: Snider Campbell, Supervisor, Savings and Loan Bureau, Commerce and Industry Department, Lew Wallace Building, Santa Fe, New Mexico 87501

FINANCIAL INSTITUTIONS

Because Section 48-7-12 NMSA 1978 specifically makes due-on-sale provisions in residential property mortgages unenforceable, the Savings and Loan Supervisor cannot use general authority granted in Section 58-10-50 NMSA 1978 to promulgate a regulation making such provisions enforceable by savings and loan associations.

QUESTIONS

Does the Savings and Loan Supervisor, under the provisions of Section 58-10-50 NMSA 1978, have the authority to allow state-chartered associations to exercise "due-on-sale" clauses in their mortgage instruments notwithstanding the provisions of Sections 48-7-11 to 48-7-14 NMSA 1978?

CONCLUSIONS

No.

ANALYSIS

Section 58-10-50 NMSA 1978 states:

"Notwithstanding any other provision of the Savings and Loan Act, every company, association or corporation licensed under the provisions of the savings and loan laws of this state whose accounts are insured by the federal savings and loan insurance corporation or its successor, and which is a member of a federal home loan bank or its successor, shall possess **in addition to the rights, powers, privileges, immunities and exceptions provided by the Savings and Loan Act**, such additional rights, powers, privileges, immunities and exceptions which the supervisor may grant, extend and provide for by regulations promulgated pursuant to the provisions of Sections 58-10-72 and 58-10-73 NMSA 1978; provided, however, that every such additional right, power, privilege, immunity and exception so granted, extended and provided for by the supervisor are [is] also possessed by federally chartered associations at the time such regulation is promulgated. Provided, further, that the supervisor shall also adopt regulations controlling the aforesaid state associations to the same extent that federally

chartered associations are controlled in those instances where state regulations are less restrictive than federal regulations."

OPINION

Essentially, this statute gives the supervisor the authority to promulgate regulations giving state-chartered savings and loan associations "rights, powers, privileges, immunities and exceptions" that federally chartered associations possess. This authority is limited by the statutes empowering the supervisor to promulgate regulations, Sections 58-10-72 and 58-10-73 NMSA 1978, and any other state laws which may affect the powers of state associations.

If Sections 58-10-50, 58-10-72 and 58-10-73 are construed to allow the supervisor to regulate mortgages and due-on-sale clauses, and a regulation is adopted to allow enforcement of due-on-sale clauses by savings and loan associations, then conflicts between such regulation and {319} Sections 48-7-11 through 48-7-14 would arise. These conflicts may be resolved by reference to the rules of statutory construction.

First, while duly adopted regulations have been held to carry the force and effect of law, regulations by an administrative agency cannot be construed to repeal, expressly or by implication, legislative acts dealing with the same subject matter. As stated in **Jones v. Employment Services Division of Human Services Department**, 95 N.M. 97, 99, 619 P.2d 542 (1980), "An agency by regulation cannot overrule a specific statute."

Second, the statutes prohibiting acceleration of mortgage deal with a particular subject and were enacted after the Savings and Loan Act. A fundamental rule of statutory construction provides that "[C]onflicts between general and specific statutes are resolved by giving effect to the specific statute." **Lopez v. Barreras**, 77 N.M. 52, 54, 419 P.2d 251 (1966). This rule applies when there exists both a specific statute enacted for the primary purpose of dealing with a particular subject and a general statute which does not refer to that subject, but is broad enough to cover it. **Varney v. City of Albuquerque**, 40 N.M. 90, 55 P.2d 40 (1936). Because Section 48-7-12 specifically makes due-on-sale provisions in residential property mortgages unenforceable, the supervisor cannot use general authority granted in Section 58-10-50 to promulgate a regulation making such provisions enforceable by savings and loan associations.

Similarly, when the legislature enacts a new statute, an appellate court will presume that the legislature intended to change the law as it previously existed. Thus, even if the supervisor had general authority to enact regulations permitting due-on-sale clauses in mortgages, such authority has been limited by the passage of a statute which is more specific and later in time.

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