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FILE NO. S-836

**REAL ESTATE:  
Whether Articles of Agreement  
For Warranty Deed Is a Loan  
Secured by Residential Real Estate**

Honorable Thomas C. Rose  
State Representative  
Chairman, Judiciary I  
Room 2032, State Office Building  
Springfield, Illinois 62706

Dear Representative Rose:

This responds to your request for an opinion as to whether Public Act 78-996 applies to Articles of Agreement for Warranty Deed. For the sake of clarity, it should be pointed out that Articles of Agreement for Warranty Deed are also known by various other names, including installment land contract, executory contract for the purchase of land and contract for deed. Basically, it is an agreement whereby the owner of real estate agrees to deliver a deed to the purchaser after the purchaser has met certain conditions, including the payment of

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a predetermined number of installments. The purchaser is allowed to take possession during the interim.

Public Act 78-996 amended sections 4, 4.1a and 5 of "AN ACT in relation to the rate of interest and other charges in connection with sales on credit and the lending of money". (Ill. Rev. Stat. 1973, ch. 74, pars. 1 et seq., as amended.) The significant part of Public Act 78-996 added a sentence to the first paragraph of section 4. (Ill. Rev. Stat. 1973, ch. 74, par. 4.) That section now reads as follows, with the added sentence underscored.

"In all written contracts it shall be lawful for the parties to stipulate or agree that 8% per annum, or any less sum of interest, shall be taken and paid upon every \$100 of money loaned or in any manner due and owing from any person to any other person or corporation in this state, and after that rate for a greater or less sum, or for a longer or shorter time, except as herein provided. An interest rate of 9 1/2% or any lesser amount is lawful for loans that are (1) secured by residential real estate and (2) entered into on or after the effective date of this amendatory Act and before July 1, 1975; whenever such loan exceeds 8% per annum, it is unlawful to provide for a penalty or other charges for prepayment.

\* \* \*

Excluding the time limitations, an interest rate of 9 1/2% is lawful only for loans secured by residential real estate. The answer to your question depends then on whether

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the unpaid purchase money under Articles of Agreement for a Warranty Deed is a loan and if so, whether it is secured by residential real estate.

I am aware that in many situations, Articles of Agreement for a Warranty Deed are treated as a mortgage (Aron v. City of Chicago, 8 Ill. App. 3d 392, and cases cited therein), and is often regarded as a security device. Consideration of this factor is not necessary, however, unless there is a loan involved. The term "loan" is not defined either in Public Act 78-996 or in "AN ACT in relation to the rate of interest etc.". A "loan" has been defined In Re Lalla's Estate, 362 Ill. 621 at 626-627, as follows:

"\* \* \* Webster's New International Dictionary gives several definitions of the term. Among them are: 'That which one lends or borrows, esp. a sum of money lent at interest; as, he re-paid the loan.' Beebe v. Kirkpatrick, 321 Ill. 612, 152 N.E. 539, 47 A.L.R. 891. Webster also defines it as 'A lending,' and defines 'lend' as, 'To put out for hire or compensation.'  
\* \* \* The essence of a loan, under the statute, is, that the fiduciary puts out his ward's money for hire. \* \* \* "

It appears that as used in the Public Act in question the term "loan" is limited to a putting out of money for hire or compensation. Section 4 of "AN ACT in relation to the rate of

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interest, etc.", as quoted above, provides for two categories of contracts: those where money is "loaned", and those where money is "in any manner due and owing". Under Articles of Agreement for a Warranty Deed there is in fact no putting out of money for hire or compensation. While the purchaser agrees to pay money in installments, there is no initial lending of money to him. There is only created a situation where money is due and owing.

I, therefore, am of the opinion that Public Act 78-996 does not apply to Articles of Agreement for Warranty Deed and that an interest rate of 9 1/2% would not be lawful under such an agreement.

Very truly yours,

A T T O R N E Y   G E N E R A L