

ATTORNEY GENERAL

May 3, 1976

HONORABLE RICHARD F. SCHAUB  
*Commissioner of Banking*  
36 West State Street  
Trenton, New Jersey 08625

FORMAL OPINION NO. 13—1976

Dear Commissioner Schaub:

You have asked whether a State chartered savings and loan association may offer a variable interest rate mortgage under the Savings and Loan Act of 1963. A variable rate mortgage is a mortgage in which the interest rates move upward or downward in line with the prevailing money mortgage rates. The changes in rate may be reflected by either a change in the term of the loan or the monthly payments, or a combination of both.

There does not appear to be any statutory restriction to a savings and loan association offering a variable rate mortgage. The Savings and Loan Act authorizes an association to invest in, *inter alia*, direct reduction mortgage loans. A direct reduction mortgage loan is a loan the principal of which is repayable in periodical installments. N.J.S.A. 17:12B-5(11). The Act further provides that such periodical payments must be sufficient to pay the principal and interest of the loan in full in a period of 40 years or less. N.J.S.A. 17:12B-147. There is no legislative restriction imposed either to the amount of interest to be charged with each periodical payment or to an agreement where the amount of interest is varied in relation to an external economic indicator. The primary legislative concern with respect to direct reduction loans was to simply assure that the term of the loan would not extend beyond a specified number of years.

For these reasons, the State associations may issue variable rate mortgages so long as the maximum term does not exceed a period of 40 years and the maximum amount of interest chargeable, pursuant to the terms of the loan, does not exceed the applicable usury ceiling in effect at the time of the loan, written contract or commitment for such loan was made.

Very truly yours,  
WILLIAM F. HYLAND  
*Attorney General*

By: MICHAEL E. GOLDMAN  
*Deputy Attorney General*