CAN NEW YORK TELL YOU WHAT INTEREST TO CHARGE?*

** by Bruce J. Bergman

Not for residential first mortgages. [*Mayor of City of New York v. Council of City of New York,* 4 Misc.3d 151, 780 N.Y.S.2d 266 (Sup. Ct. 2004)].

What the legal rate of interest is in New York and how it relates to the concept of usury is a particularly difficult arena – one we won't address here because it is really a different subject. [If there is a special need to drown in nuance – but find answers – see 1 *Bergman on New York Mortgage Foreclosures,* Chapter 6, Usury, Matthew Bender & co., Inc. (rev. 2006).]

And don't confuse this with the predatory lending law in New York. Among many other things, that statute advises that if a lender does charge above a certain rate of interest, then a host of mandates and prohibitions become operative. But the statute does not dictate what the interest rate may be or what ceiling might be imposed.

Here is what is to be addressed now. Suppose some local governmental entity (such as the City of New York) passes a statute providing that lending institutions shall not charge more than a certain rate of interest upon home loans as a condition of doing business with that governmental subdivision. Can they do that?

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No, and mortgage professionals may recall the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA) whereby the federal government preempted all state restrictions on interest rates for federally related lenders making first mortgage loans on residential real estate (a 1-6 family home). An underlying basis for the statute was to allow interest rates from time to time to accommodate the circumstances of changing conditions. Unless a state opted out of that preemption, for the noted type of loan there simply was no interest cap which a state could impose.

In the case at issue, the court found that the DIDMCA preempted any state or local laws which purported to put a cap on interest rates. So, no one can tell a lender they can't do business with a governmental entity because they don't like your interest rates.