

SMALL LOAN LAW: Licensees under Small Loan Law permitted to accept real estate as security. Sections 5544 to 5564, R. S. 1929.

8.28
August 26, 1935.



Hon. O. H. Moberly
Commissioner of Finance
Jefferson City, Missouri

Dear Mr. Moberly:

This is to acknowledge receipt of your letter of August 12, 1935, in which you request the opinion of this Department "as to whether or not licensees under Article VII, Chapter 34, Revised Statutes of Missouri, 1929, are prohibited from accepting mortgages on real estate as security for loans made under the provisions of said Article."

The "Small Loan Act" is found in Sections 5544 to 5564, inclusive, Revised Statutes of Missouri, 1929, and provides for the regulation of the small loan business.

Said act provides that those who are engaged in the making of loans of \$300.00 or less are required to be licensed, bonded, examined and supervised by the Commissioner of Finance of the State of Missouri. Each licensee is required to keep records and to give borrowers receipts for payments and a clear statement of the terms of the contract; other regulatory features are contained in the act. The maximum rate of interest in Missouri is two and one-half per cent. per month on all outstanding balances. The act further provides for criminal penalties for any violations of same.

Section 5556, R. S. Mo., 1929, provides as follows:

"Every licensee hereunder may loan money, not exceeding in amount the

sum of \$300.00, and may charge, contract for and receive thereon interest at a rate not to exceed two and one-half per centum per month. Interest shall not be payable in advance or compounded and shall be computed on unpaid balances. In addition to the interest herein provided for, no further or other charge or amount whatsoever for any examination, services, brokerage, commission or other thing or otherwise shall be directly or indirectly charged, contracted for or received, except the fees allowed by law actually and necessarily paid out by the licensee to any public officer for filing, recording or releasing in any public office any instrument securing the loan, which fee may be collected when the loan is made or at any time thereafter. No interest or charge in excess of those permitted by this article shall be made, contracted for or received, and if any such is charged, made, contracted for or received, the contract of loan and all evidence thereof and security and lien therefor shall be void and of no effect, and the licensee shall have no right to collect or receive any principal, interest or charge whatsoever of or for such loan."

Section 5557, R. S. Mo., 1929, provides in part as follows:

"* * *; upon repayment of the loan in full mark indelibly every paper signed by the borrower with the word 'paid' or 'cancelled,' and release any mortgage, * * *"

It will be seen that the act contemplates that security may be given by the borrower, when required, for the loan of any money. Practically all states have adopted what is known as the "Small Loan Law", which has for its purpose the regulation of loans to people of small incomes, and we find upon investigation that in some states under this act it is provided that "no licensee shall take a lien upon real estate as security for any loan made under this act, except such lien as is created by law upon the recording of a judgment."

Nowhere in the act in Missouri is there any restriction that real estate may not be given as security for a loan under the "Small Loan Act." It is, therefore, our opinion that a licensee under the "Small Loan Act" is not prohibited from accepting mortgages on real estate as security for loans under the provisions of Article 7, Chapter 34, Revised Statutes of Missouri, 1929.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney-General.

CRH:EG