

MORTGAGES: Deed of Trust signed by husband and wife on an estate by the entirety securing note of husband is a valid instrument.

September 5, 1939.

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Honorable Charles S. Greenwood
Prosecuting Attorney
Livingston County
Chillicothe, Missouri

Dear Sir:

This will acknowledge receipt of your letter of August 29, 1939, in which you submit two questions to this office for answer.

We are enclosing herewith copy of an opinion dated August 24, 1938, addressed to Hon. Glen W. Huddleston, Prosecuting Attorney, Carrollton, Missouri, which we think answers your first question.

Your second question is as follows:

"Another question presented in this case is that since this is an estate by the entirety and since the mortgage is signed by both husband and wife but the note representing the debt is signed only by the husband, is this a valid mortgage?"

In order for a mortgage to be good against the wife in the present case it is necessary that it be a valid contract supported by a valid consideration. The rule as to consideration necessary to support a mortgage is the same as the rule which applies to contracts generally. In 41 C. J. p. 385, it is said:

"The rule applicable to contracts generally that the adequacy of the consideration so long as it is a valuable consideration is immaterial in the absence of fraud applies in the case of a mortgage. A mortgage cannot be held invalid for want of consideration if it is supported by any consideration recognized by the law as sufficient to sustain a promise to pay. The consideration may be a benefit moving to the mortgagor or may consist in a detriment to the mortgagee, although there is no actual benefit to the mortgagor, but there must be some benefit to one party or some injury or detriment to the other."

The rule as to what constitutes a consideration is stated as follows:

"It may be laid down as a general rule, in accordance with the definition given above, that there is a sufficient consideration for a promise if there is any benefit to the promisor or any loss or detriment to the promisee. It is not necessary that a benefit should accrue to the person making the promise;

it is sufficient that something valuable flows from the person to whom it is made, or that he suffers some prejudice or inconvenience, and that the promise is the inducement to the transaction. Indeed there is a consideration if the promisee, in return for the promise, does anything legal which he is not bound to do, or refrains from doing anything which he has a right to do, whether there is any actual loss or detriment to him or actual benefit to the promisor or not."

13 C. J. p. 315.

Whether or not the wife received any of the benefits of the loan is not material as long as it can be shown that the loan was made upon the strength of her signing the mortgage along with her husband. The county would not have made the loan had she not signed the mortgage, and therefore, it was sufficient consideration to make the mortgage binding as to her. The courts of this state have followed the general rules above set down.

In the case of Summett v. Realty & Brokerage Co., 208 Mo. 501, it was held that a deed of trust signed by parties who did not receive any of the benefits of a note secured by said deed of trust was valid and binding as to them. At l. c. 514, the court said:

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"The money loaned by the company to Latitia Grover on her note, secured by the deed of trust signed by her and all of the remaindermen, was a good and valid consideration as to the latter; and even between the parties to the deed remaindermen are estopped from asserting a want of consideration to them. (Mullanphy to use v. Reilly, 8 Mo. 675; Madison County Bank v. Graham, 74 Mo. App. 251; Halsa v. Halsa, 8 Mo. 303; Coal Co. v. Blake, 85 N. Y. 226; Edwards v. Schoeneman, 104 Ill. 278; Johnson v. Bldg. Assn., 104 Pa. St. 394)."

CONCLUSION

It is, therefore, the opinion of this office that a deed of trust or mortgage signed by a wife along with her husband upon joint property of husband and wife, to secure a note signed by the husband alone, is valid and binding as to the wife and the same may be foreclosed in the usual way.

Yours very truly,

APPROVED:

HARRY H. KAY
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HHK:RV
Enc.