

SAVINGS AND LOAN ASSOCIATION:
INSTALLMENT NOTES:
PROVISIONS OF:
ILLEGAL WHEN:

Installment promissory note requiring borrowing member of a savings and loan association to pay one dollar per month on his savings account in addition to payments on note as additional security until principal of loan is fully satisfied, violates paragraph 3, Section 369.135, RSMo 1949.



October 23, 1957

Honorable Paul R. Sims, Supervisor
Savings and Loan Supervision
Department of Business and Administration
Jefferson City, Missouri

Dear Mr. Sims:

This department is in receipt of your recent request for our legal opinion which reads as follows:

"The document which is attached to this letter is being used by the Mississippi County Savings and Loan Association of Charleston, Missouri.

"Our examiners feel that this is in violation of Section 369.135, Paragraph 3, which reads as follows:

'Except as limited by the board of directors from time to time, a member may make payments on an account in such amounts and at such times as he may elect.'

"I would appreciate if you would study this document and give this office your opinion as to whether this is in violation of the statute."

Paragraph 3, Section 369.135, RSMo 1949, is referred to in your letter and reads as follows:

"3. Except as limited by the board of directors from time to time, a member may make payments on an account in such amounts and at such times as he may elect."

Honorable Paul R. Sims

We have not been informed the Board of Directors of the Mississippi County Savings and Loan Association has limited members in making payments on their accounts to any particular amount within a specified time, as authorized by the above-quoted section, and it will be assumed no such limitations have been imposed by the directors.

We are advised the attached form of installment note is in general use by the association and a borrower is required to execute such form of note in favor of the association, together with a deed of trust, on certain real estate described therein.

Part three of said note is involved in the opinion request, and reads as follows:

"3. And the balance, if any, to the reduction of the principal sum remaining due upon the loan.

"For value received we further promise to pay the Mississippi County Savings and Loan Association, at its office in Charleston, Missouri, the sum of One and no/100 (\$1.00) Dollars per month, into a savings account in our names in said association as additional security for the above loan, and which said monthly payment shall be made until the principal of this loan is paid in full.

"If default be made in the payment of said monthly installments for a period of three months, or if the equivalent of three month' total payments shall become in arrears, the balance of said principal sum, together with the amount advanced by and due to the association, with all arrearages and interest, shall at the option of the association, become at once due and payable. The makers, endorsers, sureties and guarantors of this note severally waive presentment for payment, notice of non-payment, protest, notice of protest, and any notice of any defenses on account of, extension of time for payment or change in the method of payment hereof.

"This obligation is secured by a deed of trust of even date herewith on certain real estate, all the terms, covenants and agreements of which are hereby made a part of this instrument." (Underscoring ours.)

From the underscoring portion of part three of the note it appears the borrower obligates himself to make the payments on account, as provided therein, until the principal is fully paid,

Honorable Paul R. Sims

and such terms require him to make payments of one dollar per month. The right to exercise his discretion in choosing to make payments, as he may desire, has been taken away. It is obvious that part three of the note is in violation of Paragraph 3, Section 369.135, supra, and is void.

CONCLUSION

Therefore, it is the opinion of this department that the provision of an installment promissory note requiring a borrowing member of a savings and loan association to pay one dollar per month on his account, in addition to the payments on the note until the principal of the loan is fully paid, as additional security for such loan, is in violation of Paragraph 3, Section 369.135, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Yours very truly,

John M. Dalton
Attorney General

PNC/ld