

BUILDING AND LOAN ASSOCIATIONS:

RIGHT TO ENTER INTO
AN AGREEMENT TO EXTEND
PAYMENT OF NOTE AND DEED
OF TRUST.

5594 Law 31
8-10
August 4, 1933

FILED
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Honorable Ira A. McBride
Supervisor Building and Loan Associations
Jefferson City, Missouri

Dear Mr. McBride:

This Department acknowledges receipt of your letter of July 19, 1933, as follows:

"Please note the inclosed letter received from the Central Savings and Loan Association of Marshall, Missouri, inclosing an "Extension Agreement".

This Department requests your opinion as to whether or not the "Extension Agreement" as submitted meets with the requirements of the statutes governing Missouri Building and Loan Associations.

We will appreciate your opinion on this matter at your earliest convenience."

The draft of the extension agreement attached to your letter in paragraph One thereof provides:

"First parties agree to and by these presents do release, cancel and surrender to third party the said certificate No. _____ of the capital stock of the said Central Savings & Loan Association,

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and the third party does hereby accept the surrender of said stock, subject to the provisions of this agreement, and releases first parties from the payment of further dues thereon."

Upon the surrender of the certificate as provided for in the quoted paragraph, the borrower would become a non-member of the association and the legal effect of the extension agreement would be to make a loan to a non-member of an association.

Section 5594, Laws 1931, page 149, provides:

"* * * The moneys accumulated from payments on account of stock, interest, premium and fines, as aforesaid, or from any other source whatsoever, after due allowance made for necessary and proper expenses, and subject to the provisions hereinafter set forth respecting the withdrawal and cancellation of shares and accumulation of contingent fund, may, at times provided in the by-laws, be offered to such shareholder or shareholders who shall bid the highest premium for the preference or priority of right to have the loan or advance of a sum equal to to ultimate value of one or more of his or their respective shares* * *."

The above section further provides:

"In case there shall be a balance of money remaining undisposed of at any stated meeting, the directors may, at their discretion, loan the funds so remaining on hand to others than stockholders on the security of prime unincumbered real estate or invest in obligations of the United States or of the State of Missouri, and may dispose of such loans and investments at any time the said funds are needed for making loans to members or for the other purposes of the association* * *."

Treating the borrower and beneficiary of the extension agreement as a non-member borrower, the same conditions in the association would have to exist before the association would be entitled to enter into the extension agreement as are required to exist where the funds of the association are loaned to a non-member borrower or are invested in the obligations of the United States or of the State of Missouri.

We further are of the opinion that before such an extension agreement is made the association should adopt a by-law authorizing such an agreement to be made.

We are further of the opinion that in the event it is necessary to foreclose the deed of trust after the extension agreement had been made, it would be necessary to go into a court of equity to foreclose under the deed of trust and extension agreement, for the reason that the extension agreement had been made a part of the deed of trust and had somewhat altered its terms and provisions authorizing a foreclosure. That only, of course, involves a matter of expense.

There would be a small advantage to the remaining members in that the shareholder had surrendered his stock and thereafter would not be entitled to share in any of the profits of the Association.

The general right to make extension agreements affecting deeds of trust is recognized by the Supreme Court of this state and most of the other jurisdictions. In *Sturgeon v. Mudd*, 190 Mo. 200-209, the Supreme Court of this state said:

"* * * The petition does not state a cause of action, because it fails to allege that there was any consideration moving from the plaintiff to defendant to support the promises and agreements alleged. A mere promise, unsupported by a valuable consideration, to grant an extension of time for the payment of a debt, or to postpone a sale under deed of trust, is not sufficient in law to bind the person promising."

See also 41 C. J. page 808, Section 952,

Roe v. Fleming, 32 Okl. 259, 122 Pac.496.

Honorable Ira A. McBride

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While the foregoing is true, we call your attention to a statement of law in 41 C. J. 582, Section 545, as follows:

"Where a first mortgagee grants to the mortgagor an extension of the time for payment of the mortgage debt, but without any actual or intended discharge of the mortgage or taking a new one, and without any fraudulent intent as regards the second mortgagee, the latter cannot claim to be preferred to the first mortgagee merely on the ground of such extension, unless perhaps, in accordance with general principle, where he occupies the position of a surety for the first mortgage debt and the extension is made without his consent."

It is apparent that some situations might arise or conditions exist that would involve an association which entered into an extension agreement, with the rights of holders of deeds of trust on the property described in the first mortgage executed and recorded subsequent to the execution and recording of the first deed of trust. These are matters that the attorneys for an association would have to pass upon at the time and we express no opinion on the subject, but merely call it to your attention.

Subject to what we have said above, whether or not it would be wise for an association to enter into an extension agreement is a matter to be passed on by the association.

Very truly yours,

GILBERT LAMB
Assistant Attorney General,

APPROVED:

HOY McKITTRICK
Attorney General.

GL:LC