BUILDING AND LOAN: Association may not take out life insurance on borrower.

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Honorable J. W. McCammon, Supervisor
Bureau of Building and Loan Supervision
Jefferson City, Missouri

Dear Mr. McCammon:

This department is in receipt of your request for an official opinion which reads as follows:

> "A building and loan association in Kansas City has inquired of this department whether it may take out insurance upon the life of a borrower of the association. The plan is to insure the life of every person to whom money is loaned. This life insurance will be in the nature of security in addition to the mortgage and note taken by the association. The insurance will be paid for by the insured, but if he does not agree to such an arrangement, then such insurance shall be paid for by the association. We would like your opinion as to the right of the association to take this added security."

The general rule as to power of a building and loan association to take security is given in 12 C. J. S., 466, as follows:

> "A building and loan association has implied power, if express power is not conferred by statute, to take security for its loans, and such security should comply with statutory requirements, if any."

We look, therefore, to the statutes as to the types of security that may be taken. Section 5594, Laws of Missouri 1939, page 255, par. 1, provides in part as follows:

> "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 shareholders or shareholder who shall bid the highest premium for the preference or priority of right to have a loan or advance of a sum equal to the ultimate value of one or more of his or their respective shares; and such shareholders so bidding the highest premium as aforesaid shall be entitled to receive a loan or advance of a sum of money equal to the full value of each share held by him, in the method provided for in the by-laws of such association; the said premium bid may be deducted in gross from the amount of the loan, or may be charged and be required to be paid in proportionate amounts or installments at such time during the existence of the shares of stock loaned or advanced upon as may be provided in the by-laws of the association: Provided, that where the stock of an association is issued in series, or at different times, in such manner that all said stock will not mature at the same time, then the borrower shall pay only such proportion of the full premium as the number of months his stock lacks of being one

> hundred and twenty months old, bears to one hundred and twenty months. Said association may provide in its by-laws that the bids for loans at its stated meetings, instead of a premium, shall be a stated rate of annual interest upon the sum desired, payable in periodical installments; such bids shall be the interest to be paid during the whole period of the loan or advance. A shareholder shall be entitled to borrow such fractional part of a share as the by-laws may provide. 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: Provided, that any such association may, by action of its board, dispense with the offering of its money for bids, and in lieu thereof loan or advance its money to members at such a rate of interest, or interest and premium, or interest and loan fee, as may be fixed from time to time, such premium as charged to be paid in gross or periodical installments. * * * * * "

Section 5597, Laws of Missouri 1939, page 257 provides in part as follows:

> "For every loan or advance made to a member as aforesaid, a non-negotiable note or bond secured by first mortgage or deed of trust on real estate shall be given, accompanied by a transfer

and pledge of the shares of stock of the member or members so obtaining a loan or advance. Said shares so transferred and pledged shall be held by the corporation as additional or collateral security for the performance of the agreements, covenants and conditions of said note or bond and mortgage or deed of trust. Said note or bond and mortgage or deed of trust shall recite and set forth the number of shares transferred and pledged by the particular shareholders so borrowing, and the amount of money advanced thereon, and shall be expressed to be conditioned for the payment at the stated meetings, or at such other times as may be agreed upon, to the corporation of the dues on the number of shares so pledged and advanced upon, and the interest, or interest and premium upon the loan or advance for which said shares are pledged, and said note or bond and mortgage or deed of trust given, together with all fines chargeable upon arrears of such payment, shall remain in full force and effect until said shares shall reach the ultimate value thereof, and until all payments of dues, interest and fines and all other liens due to such association on account of such shares and loans shall have been fully paid, or said loan shall be otherwise sooner cancelled and discharged: Provided, however, that the shares of the particular corporation without other security, may, in the discretion of the board of directors, be accepted as security for loans or advances, to an amount not exceeding nine-tenths of the withdrawal value of such shares at the time, as shown by the books of such association. * * * * * * * * * * "

Therefore, in Missouri as was stated in Tierman's Ex'r v. Security B. & L. Ass'n., 152 Mo. 135, 53 S. W. 1072, "the funds of such corporations shall be loaned only 'on real estate security, or on the security of its own shares of stock' * * " No other type of security is recognized by the Statutes of Missouri and so the taking out of insurance by the association on the life of the borrower is not permissible.

This view is borne out by the case of Smathers v. Northwestern Nat. Ins. Co. of Milwaukee, Wis., 72 S. W. (2d) 875, in which the borrower delivered to the building and loan association certain fire insurance policies upon the property which he had mortgaged as added security. The court said:

> "The plaintiff contends that under the law governing building and loan associations such associations are forbidden to loan money on personal property, * * * The loan in question was made on real estate and not on personal property. The pledge of the policies was a mere incident to the main contract. It is a matter of common knowledge that a building and loan association ordinarily requires a borrower constantly to keep the premises securing the loan insured and to pledge the right of the insured in the policy to the payment of the loan. * * * * * * "

In this opinion we do not pass upon the right of the association to pay for fire insurance upon the premises although this right has been upheld in other jurisdictions. Chicago Building Society v. Crowell, 65 Ill. 453.

CONCLUSION

It is, therefore, the opinion of this department that a building and loan association may not take

out insurance upon the life of a borrower and pay for such insurance out of its assets.

Respectfully submitted

ARTHUR O'KEEFE
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APPROVED:

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