

396.

MORTGAGE—MAY SECURE RENEWAL NOTE—BUILDING AND LOAN
ASSOCIATION AUTHORIZED TO TAKE SUCH NOTE.

SYLLABUS:

A mortgage which contains a clause to the effect that the mortgage shall secure any renewal note or notes of the original note described in the mortgage is a valid and binding security for a renewal note taken at the time the original note becomes due and for succeeding renewal notes. There is no prohibition in the law against the taking of such a mortgage by a building and loan association.

COLUMBUS, OHIO, April 27, 1927.

HON. J. W. TANNEHILL, *Superintendent of Building and Loan Associations, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication, reading as follows:

“We enclose herewith copy of form of note and mortgage in use by a certain building and loan association.

You will observe that under this form of note the loan is payable in equal monthly installments over a period of three years.

It is the practice of this association at the expiration of the three year period to have the borrower sign a new note for a like period, this being plainly designated on its face as a ‘renewal note’, the original note being cancelled.

When the matter was taken up with the company they explained that they are fully protected under the circumstances by reason of a provision in the mortgage which reads as follows:

“This mortgage shall secure any renewal note or notes of those above described evidencing all or any part of the original debt or the accrued interest thereon, and shall also secure any and all other debts, or liabilities, of said Grantor——— or any or either of them to said Grantee now due or to become due or that may hereafter be contracted or incurred.”

Will you please advise whether or not under the laws of Ohio this Department is justified in accepting such a mortgage as valid and binding security for such renewal notes?”

The form of note submitted provides for the payment of monthly installments over a period of three years and the payment of the balance thirty-seven months after the date of the note. The mortgage form sets out a copy of the note and then contains the provision quoted in your letter above.

Your question is as to whether or not such a mortgage is a valid and binding security for renewal notes taken at the end of the three year period above referred to. In other words, does the mortgage security extend to a renewal note, the original note having been cancelled?

In 41 Corpus Juris, 468, on the subject of “Mortgages”, it is said:

“A mortgage intended to secure a particular debt is valid in equity for that purpose, whatever form the debt may assume, if it can be traced; hence the mortgage will cover any renewals of the note, bond, or other evidence of the original debt secured. * * * So where the debt secured by the mortgage has been reduced by partial payments, a new note given in settlement of the balance remaining due will be equally covered by the security.”

In 19 Ruling Case Law, Mortgages, Section 234, page 450, it is said:

"A mortgage secures a debt or obligation, and not the evidence of it, and no change in the form of the evidence, or in the mode or time of payment, can operate to discharge the mortgage. So long as the debt secured remains unpaid, neither the renewal or substitution of the evidence of the debt will impair a lien of the mortgage. It is not necessary to constitute subsequently issued notes renewals of the original notes that they should be issued for the same amounts, and that each successive note should have been applied to take up its immediate predecessor."

In the case of *Kuhns vs. McGeah*, 38 O. S. 468, the syllabus reads as follows:

"One who purchases land, receiving a deed of general warranty, without knowledge of a mortgage theretofore made by his grantor, but which mortgage was duly recorded, acquires no greater estate than an equity of redemption, notwithstanding the fact that the mortgagee, from time to time, for a valuable consideration, after the purchase, extended the time of payment of the debt secured until the mortgagor became insolvent."

It appears the Kuhns had borrowed of the plaintiff the sum of \$2,100.00 and had given his note for said sum, payable in one year, and at the same time executed and delivered a mortgage on certain real estate to secure the payment of the note. At the end of the year the interest was paid and the note extended for another year. This occurred for some four of five years, at which time Kuhns executed a new note for \$2,100.00 and the old note was returned to him. Payment of this second note was also extended for several years, the last of such extensions having been made about eight years after the execution of the first note and the mortgage. On the question of the validity of the mortgage as security for the second note above mentioned, the court on page 472 said:

"It is claimed, however, that the taking up of the old notes and giving others was a payment and satisfaction of the indebtedness, as respects the rights of the mortgagee, at least in so far as it was secured by the mortgage; but the law is well settled that the substitution of the new note is not a payment or release of the mortgage even as to subsequent purchasers. Jones on Mortgages, 927, and cases therein cited. 'A mortgage secured the debt and not the note, or bond, or other evidence of it.' Ibid. 924. See also Hilliard on Mortgages, 4th Ed. 476. Numerous other authorities might be cited to the same point."

In the form of mortgage under consideration the mortgagor and the building and loan association specifically agree that the mortgage shall secure any renewal note or notes evidencing all or any part of the original debt. As between the mortgagor and the building and loan association therefore there can be no question as to the intention of the parties that the execution of a renewal note and the cancelling of the original note shall not operate as a cancellation or payment of the mortgage. Furthermore, if the mortgage is properly placed on record this would be notice of the terms of said mortgage to all persons who thereafter would have any dealings in connection with the real estate described in said mortgage.

It is therefore my opinion that the form of mortgage which is the subject of your inquiry is a valid and binding security for both the original note and any renewal note evidencing all or any part of the original debt.

Respectfully,
EDWARD C. TURNER,
Attorney General.