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September 19, 2017

ATTORNEY GENERAL OPINION NO. 2017- 14

The Honorable Jim Kelly
State Representative, 11th District
309 S. 5th St.
Independence, KS 67301

The Honorable Jeff Longbine
State Senator, 17th District
2801 Lakeridge Rd.
Emporia, KS 66801

Re: Fees and Salaries—Fees in all Counties and Salaries in Certain
Counties—Fees of Register of Deeds

Synopsis: The cap on mortgage recording fees found in K.S.A. 2016 Supp. 28-115(j)
applies to original mortgages as well as refinanced mortgages. Cited
herein: K.S.A. 2016 Supp. 28-115; K.S.A. 2016 Supp. 79-3102.

* * *

Dear Representative Kelly and Senator Longbine:

As Chairman of the House Committee on Financial Institutions and Pensions and
Chairman of the Senate Committee on Financial Institutions and Insurance,
respectively, you ask for our opinion on K.S.A. 2016 Supp. 28-115(j), which reads as
follows:

On and after January 1, 2015, the fee shall not exceed \$125 for recording
single family mortgages on principal residences imposed pursuant to this
section where the principal debt or obligation secured by the mortgage is
\$75,000 or less.

Specifically, you ask whether this cap on mortgage recording fees applies to refinanced mortgages as well as original mortgages. For the reasons described below, we think the answer to your question is yes.

The statutory language in question was added by the 2014 legislature as part of House Bill 2643 (HB 2643).¹ Among other things, HB 2643 amended the statutes governing mortgage recording fees and mortgage registration taxes. K.S.A. 28-115(a) was amended to increase the fees charged by county registers of deeds for recording mortgages, beginning January 1, 2015 and gradually increasing every calendar year until January 1, 2018.²

To offset this increase, K.S.A. 79-3102(a) was amended to decrease the amount of the mortgage registration tax that must be paid before a mortgage is received and filed for record.³ Between January 1, 2015 and January 1, 2019, the mortgage registration tax will gradually decrease on an annual basis from 0.26% to 0.0% of the principal debt or obligation.⁴

Turning to your question, we consider rules of statutory construction established by the Kansas Supreme Court:

The most fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained. We first attempt to ascertain legislative intent by reading the plain language of the statutes and giving common words their ordinary meanings. When a statute is plain and unambiguous, we do not speculate as to the legislative intent behind it and will not read into the statute something not readily found in it.⁵

In this case, the language of K.S.A. 2016 Supp. 28-115(j) is plain and unambiguous. The \$125 cap clearly applies to “single family mortgages on principal residences . . . where the principal debt or obligation secured by the mortgage is \$75,000 or less.” The term “mortgage” is not defined in the statute, so we give that word its ordinary meaning, which is “a conveyance of or lien against property (as for securing a loan) that becomes void upon payment or performance according to stipulated terms.”⁶ The term “principal debt” refers to the amount of money borrowed, exclusive of any accrued owed interest.⁷

¹ L. 2014, Ch. 140, § 14.

² *Id.* These fees are now codified at K.S.A. 2016 Supp. 28-115(a)(1) through (a)(5).

³ L. 2014, Ch. 140, § 15.

⁴ K.S.A. 2016 Supp. 79-3102(a)(1) through (a)(6).

⁵ *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, 918 (2013), quoting *Stewart Title of the Midwest v. Reece & Nichols Realtors*, 294 Kan. 553, 564–65 (2012) (internal citations omitted).

⁶ <https://www.merriam-webster.com/dictionary/mortgage>, accessed on September 14, 2017.

⁷ The ordinary definition of “principal” is “sum of money that is placed to earn interest, is owed as a debt, or is used as a fund.” <https://www.merriam-webster.com/dictionary/principal>, accessed on September 14, 2017.

K.S.A. 2016 Supp. 28-115(j) does not distinguish between original and refinanced mortgages, and to read such a distinction into the statute would run afoul of the principles of statutory construction quoted above. However, we note that the ordinary definition of “mortgage” encompasses both original and refinanced mortgages. For these reasons, it is our opinion that the \$125 cap on mortgage recording fees applies to both original and refinanced mortgages in which the principal amount of debt is \$75,000 or less.

You note in your letter it has been suggested that the \$125 cap in K.S.A. 2016 Supp. 28-115(j) does not apply to a mortgage that falls within one of the categories of mortgages exempt from the mortgage registration tax pursuant to K.S.A. 2016 Supp. 79-3102(d). This argument relies on an absent relationship between the two statutes. K.S.A. 2016 Supp. 79-3102 concerns the amount of *registration taxes* that must be paid before a mortgage can be recorded. K.S.A. 2016 Supp. 28-115 concerns the amount of *fees paid to record* a mortgage with the register of deeds. The \$125 cap only applies to recording fees imposed pursuant to K.S.A. 2016 Supp. 28-115 and has no bearing on any mortgage registration tax obligations under K.S.A. 2016 Supp. 79-3102. Likewise, the exceptions found in K.S.A. 2016 Supp. 79-3102(d) apply only to the mortgage registration tax and have no bearing on mortgage recording fees required by K.S.A. 2016 Supp. 28-115.

Sincerely,

/s/Derek Schmidt

Derek Schmidt
Attorney General

/s/Sarah Fertig

Sarah Fertig
Assistant Attorney General

DS:AA:SF:sb