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March 9, 2020

ATTORNEY GENERAL OPINION NO. 2020- 4

The Honorable Jim Kelly
State Representative, 11th District
State Capitol, Room 581-W
Topeka, Kansas 66612

The Honorable Jeff Longbine
State Senator, 17th District
State Capitol, Room 341-E
Topeka, Kansas 66612

Re: Fees and Salaries—Fees in all Counties and Salaries in Certain Counties—
Fees of Register of Deeds; Second Mortgages or Successive Subordinate
Lien Mortgages; Principal Residence

Synopsis: The cap on mortgage recording fees found in K.S.A. 2019 Supp. 28-115(j) applies to initial mortgages as well as second mortgages or successive subordinate lien mortgages. Further, the cap applies to the mortgage on the primary or main residence inhabited by the mortgagor, regardless of whether the mortgagor had a previously qualifying mortgage. Cited herein: K.S.A. 2019 Supp. 28-115.

* * *

Dear Representative Kelly and Senator Longbine:

As Chairman of the House Committee on Financial Institutions and Pensions and State Senator for the 17th District, respectively, you ask for our opinion on whether the cap on mortgage recording fees found in K.S.A. 2019 Supp. 28-115(j) applies to initial mortgages as well as second mortgages or successive subordinate lien mortgages. You also ask whether the word “principal” in the term “principal residences” in the statute refers only to “first-time home borrowers or something else.”

For the reason stated below, we opine that the cap on mortgage recording fees found in K.S.A. 2019 Supp. 28-115(j) applies to initial mortgages as well as second mortgages or successive subordinate lien mortgages. Further, the cap applies to the mortgage on the primary or main residence inhabited by the mortgagor, regardless of whether the mortgagor had a previously qualifying mortgage.

K.S.A. 2019 Supp. 28-115(j) provides:

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.

This office opined in Attorney General Opinion 2017-14 that the cap on mortgage fees found in K.S.A. 2016 Supp. 28-115(j) applied to initial mortgages as well as refinanced mortgages.¹ We find the analysis set out in Attorney General Opinion 2017-14 is equally applicable to the question of whether the cap on mortgage fees applies to second mortgages or subordinate lien mortgages.

Thus, we start our analysis with the 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.²

The language of K.S.A. 2019 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 in accordance with the fundamental rule of statutory construction quoted above, 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.”³ The term “second mortgage” is also not defined in the statute. The ordinary meaning of the term “second mortgage” is “a mortgage the lien of which is subordinate to that of a first mortgage.”⁴ The term “principal debt” refers to the amount of money borrowed, exclusive of any accrued owed interest.⁵

¹ Kan. Atty. Gen. Op. 2017-14. There has been no change in the statute since Attorney General Opinion 2017-14 was issued.

² *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).

³ <https://www.merriam-webster.com/dictionary/mortgage>, accessed on February 29, 2020.

⁴ <https://www.merriam-webster.com/dictionary/second%20mortgage>, accessed on February 29, 2020.

⁵ The ordinary definition of “principal” is “a capital sum earning interest, due as a debt, or used as a fund.” <https://www.merriam-webster.com/dictionary/principal>, accessed on February 29, 2020.

K.S.A. 2019 Supp. 28-115(j) does not distinguish between the filing of an initial mortgage to purchase a single family residence and the filling of a mortgage that is subordinate to the initial mortgage, and to read such a distinction into the statute would run afoul of the principles of statutory construction quoted above. Further, there is no language in the statute that limits the number of subsequent qualifying mortgages that may benefit from the statutory cap. Because the ordinary definition of “mortgage” encompasses both initial and second mortgages or successive subordinate lien mortgages, it is our opinion that the \$125 cap on mortgage recording fees applies to initial and second mortgages or successive subordinate lien mortgages in which the principal amount of debt is \$75,000 or less.

You also ask whether the word “principal” in the term “principal residences” in the statute refers to “first-time home borrowers or something else.” Again, we employ the rules of statutory construction to ascertain the intent of the Legislature. The language of K.S.A. 2019 Supp. 28-115(j) is plain and unambiguous. The \$125 cap clearly applies to the recording of single family mortgages on principal residences, and for a principal debt or obligation secured by a mortgage that is \$75,000 or less. The term “principal residences” is not defined in statute. The term “principal residences” broadly refers to the primary or main residence inhabited by the borrower.⁶ The term is plainly not limited to a first-time home borrower because if it was the intention of the Legislature to impose such a limitation, then rather than using the term “principal residences,” the Legislature would have used the term “first-time home borrower.” Instead, the Legislature used the term that captures not only “first-time home borrowers” but all mortgagors who are recording a mortgage of \$75,000 or less on their primary or main residence that they inhabit.

For these reasons, it is our opinion that the cap applies to a residence that is the primary or main residence inhabited by the mortgagor, regardless of whether the mortgagor had a previously qualifying mortgage.

Sincerely,

/s/Derek Schmidt

Derek Schmidt
Kansas Attorney General

/s/Athena E. Andaya

Athena E. Andaya
Deputy Attorney General

DS:AA:sb

⁶ The ordinary definition of “principal” in this instance is the “most important, [consequential](https://www.merriam-webster.com/dictionary/principal), or influential: [chief](https://www.merriam-webster.com/dictionary/principal).” <https://www.merriam-webster.com/dictionary/principal>, accessed on February 29, 2020. The ordinary definition of “residence” is the place where one actually lives as distinguished from one’s domicile or a place of temporary sojourn.” <https://www.merriam-webster.com/dictionary/residence>, accessed on February 29, 2020.