

# MAINE STATE LEGISLATURE

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Credit Unions Secured Loans

Inter-Departmental Memorandum Date September 27, 1976

To Arthur M. Burton, Jr., Superintendent Dept. Bureau of Banking

From S. Kirk Studstrup, Assistant

Dept. Attorney General

Subject Authority of Credit Unions to Make Secured Loans

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This memorandum answers Deputy Superintendent Leslie G. Hilton's request for an opinion dated August 25, 1976. Mr. Hilton asked the following question:

"Can a state-chartered credit union make a loan to a member secured by a second mortgage on real estate (when some other person or institution holds the first mortgage) when there is adequate equity in the property to cover the second mortgage loan?"

The answer to this question is affirmative.

The basis of this opinion is that 9-B M.R.S.A. § 855, concerning real estate mortgage loans, is not a limitation as to the type of mortgages which may be used to secure loans, but is designed to regulate utilization of first mortgages for this purpose. In other words, either a first or second mortgage on real property could be used as security for a loan, but if it is a first mortgage, it is subject to the limitations of section 855.

In order to understand this situation, it is necessary to review the historical treatment of credit unions in this regard by the Legislature. Incorporation of credit unions was first authorized by P.L. 1941, c. 234. Among the loans which this statute authorized the credit union to make was loans secured by "mortgages of real estate." The statute then set specific limits as to the relative amount of a given credit union's assets which could be loaned in this manner. It should also be noted that the statutory form of application for a loan as established in 1941 is essentially the same as the form presently found in 9-B M.R.S.A. § 852, including "a statement of all balances due on any mortgages outstanding against said real estate" in the case of real estate mortgage loans. At this time there was also authorization for "chattel mortgage loans."

By 1965, various amendments to the authorized loan provisions had deleted the blanket authority to issue loans secured by mortgages of real estate and had changed the designation of "chattel mortgage loans" to "secured loans." However, P.L. 1965, c. 63 amended the secured loan section by deleting reference to security by chattel mortgages or conditional sales contracts on personal property, leaving the only qualification that "the loan is adequately secured."

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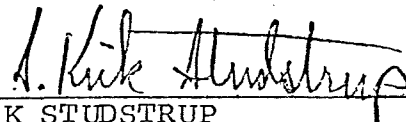
Chapter 85 of Title 9-B M.R.S.A., concerning loans by credit unions, is the result of and consists of terminology taken from previous statutes on this subject which have been enacted from time-to-time. Because the terminology comes from different sources, there is some resulting ambiguity of meaning which is not answered by any existing legislative history for enactment of the new Title 9-B. The initial clause of section 855 reads:

"A credit union may make loans to its members secured by a first mortgage on real estate located within this State, subject to the following conditions and limitations:"

At first reading, this section would appear to limit loans secured by mortgages to those secured by first mortgages. On the other hand, section 854 authorizes a credit union to make secured loans ". . . provided that such loan is adequately secured by real or personal property." (emphasis provided) In addition, section 852 provides, "the form of application for a loan to be secured by a mortgage on real estate shall contain: . . . F. a statement of all balances due on any mortgages outstanding against said real estate;"

There is a general guiding principle of statutory construction that all statutes relating to one subject should be viewed together and be construed, as nearly as possible, to make them consistent and harmonious. Inhabitants of Town of Amity v. Inhabitants of Town of Orient, 153 Me. 29 (1957). Applying that principle to the present problem, Chapter 85 may be construed as providing the following with regard to loans secured by real estate mortgages:

1. A credit union may make loans secured by a first mortgage on real property so long as the limitations of 9-B M.R.S.A. § 855 are observed.
2. A credit union may make loans secured by a second mortgage on real property so long as there is equity in that property in excess of the remaining liability under the first mortgage which is sufficient to satisfy the requirement that a secured loan is "adequately secured," as provided by 9-B M.R.S.A. § 854.



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