



STATE OF CALIFORNIA

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January 27, 1992

Attn: Ms.

Dear Mr. :

This is in response to your November 20, 1991, letter to Mr. Richard Ochsner wherein you enclosed a copy of an August 16, 1983, Deed of Trust from A and D M Trustors, to W Title Insurance Company, Trustee, on behalf of the Farmers Home Administration, Beneficiary, and a copy of a 1990 Stipulation To Reinstate Deed Of Trust (Stipulation) executed by the M , the current trustee, and the Farmers Home Administration. The Deed of Trust was recorded August 23, 1983; foreclosed under the power of sale contained therein on December 8, 1988; and rerecorded on July 31, 1991, together with the Stipulation which states in part:

"1. That certain deed of trust, ... and which was foreclosed under the power of sale contained therein on December 8, 1988, ..., be reinstated as though it had not been foreclosed and shall continue in full force and effect.

2. That certain promissory note dated August 16, 1983, secured by the said Deed of Trust, continues in full force and effect.

3. Borrowers, ..., acknowledge and warrant that the Deed of Trust is a valid and subsisting first lien on that certain real property situated in C County, California, described as follows:

* * *

4. Prior defaults, including delinquent property taxes, that existed as of the date of the trustee's sale on December 8, 1988, are not waived by the United States of America or F Insurance Company,...

5. That certain Trustee's Deed upon sale from F Insurance Company, a California corporation, as Trustee, to the United States of America and its assigns, dated December 12, 1988, and recorded as Document No. 4234, Book 632 at Page 4 in the Official Records of C County, California, is hereby canceled.

6. It is the intent of this stipulation to place the parties in the status quo ante which existed prior to any acceleration of the promissory note and/or the trustee's sale of December 8, 1988. To effectuate this intent, the FmHA shall:

a. Calculate a new repayment schedule for the remaining principal balance of the loan....

b. Notify the borrowers of the amount of any default it claims existed as of December 8, 1988....."

You state that Farmers Home Administration wants to transfer the property back to the M ; and that you advised that you couldn't transfer ownership with a deed of trust. Thus, you ask whether you can transfer ownership with a deed of trust or with a deed of trust and a stipulation reinstating same.

Considering a deed of trust from a change in ownership standpoint, as you know, Revenue and Taxation Code Section 60 defines a change in ownership as the transfer of a present interest with the right of beneficial use, the value of which is substantially equal to the value of the fee interest. Property Tax Rule 462, which implements the Revenue and Taxation Code provisions, provides that the transfer of property qualifying as a change in ownership shall be so regarded whether the transfer is voluntary, involuntary, by operation of law, etc. Subdivision (m)(1)(B) of the rule provides that the transfer of bare legal title, including any transfer resulting in the creation, assignment, or reconveyance of a security interest not coupled with the right to immediate use, occupancy, possession on profits, does not constitute a change in ownership. And Subdivision (g) thereof provides that foreclosure by judicial action of a deed of trust is a sufficient change in ownership only after the period of redemption has passed and the property has not been redeemed. It further provides that a deed of trust foreclosed by trustee's sale results in a change in ownership as of the date the right of possession vests in the purchaser.

As to whether ownership can be transferred with a deed of trust then, in our opinion, it cannot be. As this Deed of Trust

indicates, its purpose is to secure payment of a note or notes of \$40,630 executed by the M /Trustors in favor of the Farmers Home Administration. Presumably, the M acquired and were owners/trustors of the property as the result of some other form of conveyance, typically some form of deed; and in executing the Deed of Trust they did not intend to and did not transfer ownership or use of the property.

A foreclosed deed of trust, however, can result in a transfer of ownership, but again, usually some type of deed is utilized to accomplish the transfer. As indicated in Rule 462(g), the issuance of a trustee's deed pursuant to the exercise of a power of sale contained in a deed of trust will generally result in a change in ownership of the property, a transfer of ownership. Presumably, such occurred as the result of the foreclosure under the power of sale on December 8, 1988, at which time the Trustee's Deed upon sale was executed and recorded. However, such is not a consideration with respect to the July 31, 1991, recordations; that is, those recordations did not involve a foreclosure or a trustee's deed upon sale.

In our view, ownership cannot be transferred with a deed of trust and a stipulation reinstating same, absent any deed retransferring the property. As indicated above, ownership cannot be transferred by deed of trust. As to the Stipulation, important in this regard is Paragraph 5 which provided that the December 12, 1988, Trustee's Deed upon sale pursuant to the August 16, 1983, Deed of Trust foreclosure was canceled, and the absence of any deed in conjunction therewith. By agreement, the M , the Trustee, and the Farmers Home Administration purport to cancel the Trustee's Deed upon sale pursuant to which the Farmers Home Administration acquired title to the property. But according to California Civil Code Section 1058, cancelling a grant of real property does not operate to retransfer title:

"Redelivering a grant of real property to the grantor, or canceling it, does not operate to retransfer the title."

As stated in Miller & Starr, California Real Estate 2d, Sec. 643 at page 574:

"Once the deed has been legally delivered, title to the property vests in the grantee, and it cannot be divested thereafter without satisfying the formalities of another legal conveyance duly executed by the grantee. Thus, if the deed is manually returned to the grantor, or destroyed, the title still remains in the grantee."

Mr. .

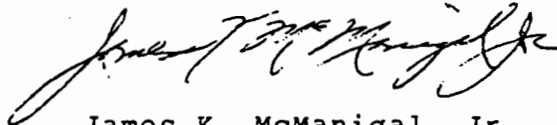
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In sum, our understanding of California law in this regard, as set forth above, is that in order for the Farmers Home Administration to return title to the property to the M , it must formally convey title through a duly executed legal conveyance such as a deed.

The views expressed in this letter are, of course, advisory only. We hope you will find them to be helpful.

Very truly yours,



James K. McManigal, Jr.
Senior Tax Counsel

JKM:jd
4325H

cc: Mr. Richard H. Ochsner
Mr. John W. Hagerty
Mr. Verne Walton
Mr. Dick Johnson