

J. Decker

DEEDS: COUNTY RECORDER: Deputy recorder of deeds may be made assignee for purpose of releasing notes by mortgage or deed of trusts.

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May 25, 1955

Honorable Garner L. Moody
Prosecuting Attorney
Wright County
Hartville, Missouri

Dear Sir:

We are in receipt of your request for an opinion which reads:

"Would you please issued an opinion on the release of Deeds of Trust in regard to who may sign as assignee. When a note secured by a deed of trust is mailed to the Recorder of Deeds to be released, has he a right to have his Deputy sign as assignee and then attest the release himself?"

Under Section 443.060, RSMo 1949, the Legislature has clearly provided what persons are qualified to make such releases, and furthermore provides that it is mandatory they do so when requested and at the cost of the one making such request. Such persons are designated as any mortgagee, cestui que trust or assignee, or administrator of a mortgagee, cestui que trust or assignee. Said statute read, in part:

"1. If any mortgagee, cestue que trust or assignee, or administrator of the mortgagee, cestui que trust or assignee, receive full satisfaction of any mortgage or deed of trust, he shall, at the request and cost of the person making the same, acknowledge satisfaction of the mortgage or deed of trust on the margin of the record thereof, or deliver to such person a sufficient deed of release of the mortgage or deed of trust; but it shall not in any case be necessary for the trustee to join in such acknowledgment of satisfaction or in such deed of release; and provided further, that when any mortgage or deed of trust shall be satisfied by a deed of release, the recorder shall note on the

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margin of the record of such deed of trust the book and page where such deed of release is recorded. In case satisfaction be acknowledged by the payee or assignee, or in case a full deed of release is offered for record, the note or notes secured shall be produced and canceled in the presence of the recorder, who shall enter that fact on the margin of the record and attest the same with his official signature; and no full deed of release shall be admitted to record unless the note or notes are so produced and canceled, and that fact entered on the margin of the record and attested as above provided."

We believe from reading your request what you are anxious to know is what is the proper procedure for releasing a note secured by a mortgage or deed of trust, when the note is signed in blank for the purpose of release and mailed to the county recorder in order that he may release same of record.

The circuit clerk and county recorder in such counties of fourth class may appoint deputies to be approved by the circuit court, who shall take the same oath as their principal, possess the same qualifications, and be authorized to perform the same duties in the name of their principal, who is responsible for their actions. Section 59.300, RSMo 1949. Furthermore, under Section 59.150, RSMo 1949, the recorder is authorized to administer oaths to any person in matters relating to the duties of his office. Such authority is likewise vested in the deputy recorder.

Since the official duties of the recorder and his deputy are the same, with like authority and responsibility, to permit one to be assignee on a note even for mere release of record, and the other to attest the release, is closely tantamount to the recorder performing both acts.

We are familiar with the general practice in making such releases. By mailing same for release, it avoids the necessity of having to personally deliver it to the recorder of deeds. Upon receipt of the same, the general practice with most recorders is to have anyone that may be available in the courthouse sign as assignee, except his deputy. In this manner no one can possibly criticize him for such action, and it is not too difficult to have someone act as assignee only for this purpose. We are not unmindful that occasionally the practice has been to require the deputy recorder to sign as assignee and the recorder attest same. There

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is no statutory inhibition against such practice. Furthermore, said note may be endorsed in blank. Section 401.009, Missouri Revised Statutes, 1949, see also Volume 10, Corpus Juris Secundum, Section 212, Page 697.

While such proposed procedure may be subject to criticism, strictly speaking, it cannot be considered against public policy and in the absence of some statutory inhibition against said practice, we are obliged to hold that it is not illegal to permit the deputy recorder to act as assignee in such case. However, we recommend the better practice to be to have someone else sign as assignee.

CONCLUSION

Therefore, it is the opinion of this department that when a note secured by a mortgage or deed of trust is mailed to the recorder of deeds in such county to be released, the deputy recorder of deeds may be made assignee for that purpose, however, it is recommended the better practice to be for someone else to sign as assignee.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Aubrey R. Hammett, Jr.

Yours very truly,

John M. Dalton
Attorney General

ARH:vlw:mw