

MORTGAGES AND DEEDS OF TRUST: If securing a series of over \$100,000, may be released without production of notes under Section 3083, Laws. Mo. 1933, p. 194.

May 11, 1936.

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Hon. Oliver Senti,
Associate City Counselor,
City Hall,
St. Louis, Missouri.

Dear Sir:

This acknowledges receipt of your letter which is as follows:

"We have an inquiry from the Recorder of Deeds as to whether he can release a deed of trust without the production of the notes, under the circumstances set out in the enclosed letter from Mr. Emmett Carter of Carter and Jones.

"Will you please advise the City Counselor if, in your opinion, it is the duty of the Recorder of Deeds to comply with Mr. Carter's request and enter the full release of the deed of trust without the notes being produced?"

Attached to the same is a letter from Mr. Emmet T. Carter of Carter & Jones setting out the facts, which we understand to be as follows:

The Leader Building Company is a corporation and it executed a deed of trust on real estate located in Missouri whereby a series of notes aggregating \$2,500,000 is secured. The deed of trust aforesaid expressly provides that the trustee, the Mercantile-Commerce Bank and Trust Company, shall, upon demand of the mortgagor, execute such deeds or instruments as may be necessary to vest the property covered by the deed of trust in the mortgagor, and further provides that the trustee therein may enter satisfaction of the indenture upon the records without production of the notes or coupons so

secured by said deed of trust, and provides that the president or vice-president of the mortgagor shall make and file with the Recorder affidavits stating that all the notes so secured have been paid or that sufficient funds have been deposited with the trustee to pay all the notes outstanding and unpaid, and that said money is deposited for the express purpose of paying said notes when the same shall be presented for payment to the said trustee. Said deed of trust further authorizes the mortgagor to make prepayment of the said notes.

A deed of release has been executed by the mortgagee or beneficiary which complies with all the requirements of the deed of trust and follows the course as authorized by said deed of trust as above set forth, and attached to said release deed are affidavits stating that all of the notes so secured have either been paid or that the money necessary to pay them in full has been deposited with the trustee for the express purpose of paying the said notes in full when the same shall be presented to the trustee for payment.

Section 3083, R. S. Mo. 1929, was repealed in 1933 and a new Section 3083 was enacted (Laws of Missouri, 1933, page 194), the pertinent parts of which latter statute are as follows:

"Whenever any mortgage or deed of trust heretofore or hereafter executed, providing for the issue of a series of notes or bonds aggregating one hundred thousand dollars or more not including interest or interest notes or coupons secured in whole or in part by property located in this state, by its terms confers authority upon the trustee or trustees therein named, or either of them, to release the property or any part thereof encumbered by any such mortgage or deed of trust from the lien thereof, such release may be so made and it shall be the duty of the recorder of deeds of the county in which the property is released from such mortgage or deed of trust shall be situated to accept and record in the proper records any deed of release executed and duly acknowledged by such trustee, pursuant to the authority conferred by such mortgage or deed of trust, releasing the whole or any part of such mortgaged property, without the notes or

bonds or coupons secured by such mortgage or deed of trust being produced: Provided, however, that no such release shall be made unless such mortgage or deed of trust shall contain a provision requiring that the amount due under the mortgage or deed of trust or the amount of money or other consideration received from the sale of the property described in such release or such portion thereof as may be stipulated in such mortgage or deed of trust shall be deposited with some banking firm or banking corporation or trust company named in such mortgage or deed of trust for the benefit of the holders of such notes or bonds."

Doubtless the reason for your inquiry is because Section 3078, Laws of 1933, page 196, provides that the notes secured by a deed of trust on realty shall be produced and cancelled or that affidavits be made and attached as therein specified, in order to release such deed of trust, and if this latter section is to be given its literal effect, it would seem to be inconsistent with the provisions of Section 3083, supra, but Section 3078 is a general law and must yield to the provisions of Section 3083 as to the class of securities mentioned in the latter section.

The purpose of the Legislature is apparent to be that the provisions of Section 3078, supra, shall apply and govern the release of all deeds of trust except the class defined by Section 3083, but shall not apply as to such latter class. By this construction effect is given to both sections, and if Section 3078 were interpreted as governing the release of all deeds of trust, then Section 3083 would be devoid of meaning.

In interpreting statutes the courts construe them so that each act passed shall have effect if the same can reasonably be done. Different sections of a statute under construction bearing on the same subject matter must be harmonized if possible.

In the case of State v. Freeland, 300 S. W. 675, 1. c. 677, the court says:

"When different sections of the statute bear on a subject, it is a rule of construction that such sections must be harmonized if possible."

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And apparently conflicting provisions of a statute must be reconciled if possible with the general legislative purpose.

In the case of *Dysart v. City of St. Louis*, 11 S. W. (2d) 1045, 1. c. 1050, the court says:

"It is the duty of the court in construing statutes which appear to be in conflict to reconcile them if possible with the general legislative purpose."

CONCLUSION

In the light of the above, it is our opinion that Section 3083 governs as to the release of deeds of trust of the class of securities mentioned therein, and as to such classification of securities Section 3078 does not apply, and that under the facts set forth above as the basis of this opinion, the deed of trust being considered is within the classification covered by Section 3083, and that it is the duty of the Recorder of Deeds of the county in which the property securing said debt is located to accept and record in the proper records the deed of release which has been executed and duly acknowledged by said trustee pursuant to the authority conferred by said mortgage or deed of trust, and that the same should be done without the production before him or cancellation by him of the notes or bonds or coupons secured by such mortgage or deed of trust.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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