

RECORDER: Recorded instruments may be destroyed without liability on the part of the Recorder.

January 27, 1937.

Honorable Mark W. Wilson
Prosecuting Attorney
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Clinton, Missouri

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Dear Sir:

We acknowledge your request for an opinion dated January 9, 1937, which reads as follows:

"The Recorder of Deeds has a considerable number of old deeds from twenty to thirty years old, or even older, which have long since been recorded, but which have not been called for by the parties who left them for record.

"The vault in the Recorder's office is very crowded with their other books and records. Is the Recorder authorized to destroy such old deeds, and how long should a deed that is recorded be held before it can be destroyed? The law provides that chattel mortgages may be destroyed after five years. Should the Recorder destroy them or should he obtain an order from the County Court to destroy them after they are five years old."

Corpus Juris, vol. 53, p. 1070, Sec. 1, defines the nature of the office of recorders of deeds thus:

"A register of deeds is a public officer authorized and required by law to keep records in the manner directed by law, of instruments in writing, especially instruments affecting the title to real property. Such an officer is in some

jurisdictions designated as a recorder of deeds, a county recorder, etc., and in other jurisdictions his duties are imposed upon other specific ministerial officers, such as county clerks, clerks of court, etc."

The Legislature of Missouri has provided the method whereby a recorder is to receive and record written instruments. Original instruments cannot be destroyed contrary to section 4209 R. S. Mo. 1929, which provides:

"If any person shall unlawfully, willfully and maliciously tear, cut, burn, or in any way whatever destroy any will, deed or other instrument of writing, the falsely making, altering, forging or counterfeiting of which is hereinbefore declared to be a punishable offense, he shall, on conviction, be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment."

Again in section 11548 R. S. Mo. 1929, it is provided:

"The recorder shall certify, on or under such deed, mortgage, conveyance, deed of trust, bond, commission or other instrument, so recorded, the day and time of the day, month and year, when he received it, and the book and page or pages of the book in which it is recorded, and, when recorded, deliver it to the party or his order."

Again in section 3100, Laws of Missouri, 1935, p. 208, the Legislature has provided for destroying chattel mortgages:

"Every such mortgage or deed of trust, where the original or a copy shall have been filed, as herein provided, shall cease to be valid against the

mortgagor or the person making the same, or subsequent purchaser or mortgagees in good faith, after the expiration of five years from the filing of the same, and the Recorders of the several counties are hereby authorized to destroy any and all such mortgages remaining on file in their respective offices after the expiration of five years from the filing of the same: Provided, that when any such mortgage shall be destroyed, as herein provided, the Recorder shall note such destruction and the date thereof upon his chattel mortgage register. Provided further, that this Section shall apply only to chattel mortgages or encumbrances upon chattels, which are merely filed but are not recorded at length. As to chattel mortgages or encumbrances on chattels which are recorded at length in the Recorder's office, the limitation of the lien and validity thereof shall be governed by the General Statutes of Limitations pertaining to written instruments."

In Corpus Juris, vol. 53, p. 1072, sec. 10, under the title of Rights, Powers, Duties and Liabilities of Recorders of deeds, we find the law said thus:

"In addition to the powers expressly conferred upon registers of deeds by the constitutional or statutory provisions applicable to their office, they may possess such incidental powers as are necessary to the proper performance of the duties expressly imposed on them. * * * *"

"Generally, the duty of the register is to receive and file, or receive and record, as the case may be, such instruments as by law are entitled to be filed or recorded, and to file or

record them in such manner as to
serve all the purposes of the law,
* * * *."

In Lewis v. State, 32 Arizona 182, 256 Pacific 1048,
l. c. 1050, that court said:

"The whole object of all laws which
require or permit instruments to be
filed, registered, or recorded in
any public office is that the general
public, if interested in the subject-
matter of the instrument, may pro-
ceed to the proper office, and if
therein they find an instrument duly
filed, registered, or recorded, they
may and must act with the presumption
that such an instrument is indeed in
existence and is genuine, and govern
their affairs accordingly."

In the case of Ewing v. Vernon County, 216 Mo. 681,
l. c. 694, the court in holding that the recorder was by
section 11548, supra, required to deliver the deed when
recorded "to the party or his order" said:

"It is stoutly argued that it was
not his statutory duty to return
recorded instruments at all, even
when requested to do so. It is
shrewdly (and sourly) suggested in
oral argument that if he obliged the
general public by the courtesy of
the return of a recorded instrument,
such act was selfserving and must be
referred to future political ambition
in currying favor with voters. He
is likened to a sower, who sows that
he may reap at seed time.. But we
shall not take this view of it. The
legal duty of an officer is to be
obliging and courteous. The general
welfare of the public demands the
application of the idea that noblesse
oblige. Not only so, but by section
9069 he is required to deliver the

deed and its certificate of record, when recorded, 'to the party or his order.' By section 9089 he is required in certain instances to transmit deeds from one county to another."

CONCLUSION.

Section 3100, supra, provides that the recorders may destroy chattel mortgages merely filed and remaining on file five years after filing same, without an order of the court, but the statutes do not specifically provide for the recorder to destroy any other type of original written instruments in his possession, such as deeds, mortgages, or deeds of trust. By virtue of section 4209, supra, this opinion is necessarily limited to those cases where the recorder has not unlawfully, willfully or maliciously destroyed any original written instrument in his possession.

As in Arizona, the object and purpose of Missouri's recording laws is to prevent fraud in transactions by securing certainty and publicity in recorded dealings, and to permit and require the general public to act with the presumption that genuine instruments exist, of which recorded instruments are but a monument.

It was not the intention of the Missouri Legislature that a recorder clutter up his office with ancient original written instruments long since recorded. The recorded instrument can serve all purposes intended by the recording law, and an original written instrument properly recorded is valuable only as an heirloom or keepsake, and the recorder's office is no depository for keepsakes.

The recorder is bound to make an effort to deliver all original written instruments to "the party or his order", after he has recorded same, according to provisions of section 11548, supra, and being unable to deliver same, this department is of the opinion that original instruments duly recorded and remaining in the recorder's

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possession for an unreasonable length of time from the date of recording, may be destroyed by the recorder as a necessary incidental power to periodically clean house, and without liability on his part for such conduct. This right to possession of "the party or his order" is not a right which will be enforced to the detriment of the general public's interest in having county records kept in an up-to-date orderly fashion.

Respectfully submitted

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APPROVED:

J. E. TAYLOR.
(Acting) Attorney General.

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