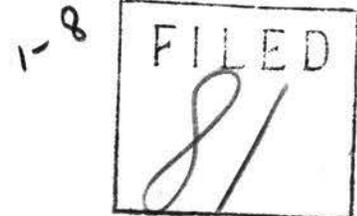


RECORDER OF DEEDS:

Cities of 600,000 or more and counties
200,000 to 400,000. Trustee's Deeds.
Recorders in cities of 600,000 or over
and counties of 200,000 to 400,000 shall
require that the unpaid obligations securing
deeds of trust or mortgages be presented to
January 4, 1938 him before recording
Trustee's Deeds under
foreclosure for such
mortgages.

Mr. Oliver Senti,
Associate City Counselor,
City of St. Louis,
St. Louis, Mo.



Dear Sir:

This office acknowledges your request dated December 31,
1937 for an opinion pertaining to the recorder of deeds which
is as follows:

"A Trustee's Deed to real estate
foreclosed under a deed of trust
securing seventy notes for \$500.00
each has been presented to the
Recorder of Deeds for recording,
together with all of the notes
except two, the holder of which
is suing the corporation from
which they were purchased for
specific performance (payment
of the notes in full), and refused
to surrender them to the Trustee.

The Recorder's Office has inquired
of this department whether it can
record the Trustee's Deed without
all of the unpaid notes being
presented, in view of the provisions
of Section 3096a, Laws of Missouri
1933.

The Statute should be enforced
uniformly throughout the State and
we have therefore advised the Record-
er's office to be governed by your
construction of its provisions.

Will you please advise this office
whether, under the circumstances
stated, the above-mentioned Trustee's
Deed should be recorded, so that we
can advise the Recorder in accordance
with your interpretation?"

The office of the recorder of deeds is a statutory office.

Section 11526, page 360 Laws of Missouri, 1933 provides as follows:

"There shall be an office of recorder in each county in the state containing 20,000 inhabitants or more, to be styled, 'The office of the Recorder of Deeds.'"

In the case of Lamar Township v. City of Lamar, 261 Mo. 171, l.c. 189, the court said:

"Officers are creatures of the law whose duties are usually fully provided by the statute."

And in 46 Corpus Juris, page 1031, Section 287, we find the rule stated as follows:

"The powers and authority of public officials are fixed and determined by law, subject to such limitations as may be imposed by the Constitution."

The legislature with the power to create an office may provide its powers and may from time to time diminish them.

The general powers and duties of the recorder of deeds in cities now or hereafter containing six hundred thousand (600,000) population or more or in counties which now or hereafter containing a population of two hundred thousand (200,000) to four hundred thousand (400,000) are set out in Section 11574a page 362, Laws of Missouri 1933. This section requires the recorder to record every deed, mortgage, conveyance, deed of trust, etc., which are presented to him for record. Section 3039 R.S. Mo. 1929, provides that:

"Every instrument in writing that conveys any real estate, or whereby any real estate may be affected, in law or equity, proved or acknowledged and certified in the manner hereinbefore prescribed, shall be recorded in the office of the recorder of the county in which such real estate is situated."

Section 11543 R.S. Mo. 1929 provides as follows:

"It shall be the duty of recorders to record: First, all deeds, mortgages, conveyances, deeds of trust, bonds, covenants, defeasances, or other instruments of writing, of or concerning any lands and tenements, or goods and chattels, which shall be proved or acknowledged according to law, and authorized to be recorded in their offices; second, all papers and documents found in their respective offices, of and concerning lands and tenements, or goods and chattels, and which were received from the Spanish and French authorities at the change of government; third, all marriage contracts and certificates of marriage; fourth, all commissions and official bonds required by law to be recorded in their offices; fifth, all written statements furnished to him for record, showing the sex and date of birth of any child or children, the name, business and residence of the father, and maiden name of the mother of such child or children."

The legislature in 1933 enacted a special law pertaining to the duties of the recorder which is found at page 193 Laws of Missouri and in Section 3096a which is as follows:

"In all cities in this State which now have or which may hereafter have 600,000 inhabitants or more and in all counties of this State which now have or may hereafter have 200,000 inhabitants and less than 400,000 inhabitants, no trustee's deed or mortgagee's deed under power of sale in foreclosure of any deed of trust or mortgage shall be accepted by the recorder of deeds for record unless the principal note or notes or other principal obligations which were unpaid when the foreclosure sale commenced and for the default in payment of which foreclosure is had, are produced to

the recorder, or if said notes are lost then the affidavit of the owner of the principal notes or obligations that they are lost. Upon such trustee's or mortgagee's deed being filed for record, the recorder shall make a notation on the margin of the record of the deed of trust or mortgage, and on the said principal note or notes or other principal obligations showing that such deed in foreclosure has been filed of record, in substantially the following form: 'Deed under foreclosure filed **** 19***** *****Recorder."

Except, whenever any trustee's deed or mortgagee's deed under power of sale in foreclosure of any mortgage or deed of trust providing for the issuance of more than one principal note or bond shall be presented for recording, it shall be accepted by the Recorder of deeds for record upon the presentation to the Recorder of the unpaid principal note or notes or bonds required by such mortgage or deed of trust to permit the trustee to sell the property under foreclosure sale. A foreclosure sale shall be deemed to have commenced within the meaning of this act upon the first publication of the notice of sale."

In construing the foregoing facts pertaining to the powers and duties of the recorder we find that the legislature by said Section 3096a limited the recorder in such cities and counties therein set out, in his duties and required that before he was authorized to record a Trustee's Deed under power of sale and foreclosure he should require the production of the principal note or notes or other principal obligations which were unpaid when such foreclosure sale commenced and for the default in payment of which the foreclosure was had.

From the authorities hereinbefore set out, the legislature had the power to create the office of the recorder and it had the power to prescribe his duties as set out in said Section 3096a in reference to the recording of Trustee's deeds.

By the second paragraph of said Section 3096a, if the deed of trust or mortgage authorizes a foreclosure in case of

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default of one or more of the notes or bonds secured, then the recorder shall accept the trustee's deed under foreclosure upon a presentation of the unpaid note or notes or bond which are required by such deed of trust to permit the trustee to sell the property under foreclosure.

CONCLUSION

It is therefore the opinion of this department that the recorder of deeds in cities now or hereafter containing six hundred thousand (600,000) or more inhabitants and in counties now or hereafter containing not less than two hundred thousand (200,000) nor more than four hundred thousand (400,000), when a trustee's deed or mortgagee's deed under power of sale in foreclosure of any deed of trust or mortgage, is presented to him for record, shall require to be presented to him the unpaid principal note or notes or other principal obligations which were unpaid when the foreclosure sale commenced and for the default in payment of which such foreclosure is had, except in the following case: If the deed of trust or mortgage provides for foreclosure in case of default of any part or all of the notes or bonds, then the recorder is authorized to accept for record, such trustee's deed upon the presentation to him of such unpaid note or notes of bonds, the default in payment of which would authorize a foreclosure.

Respectfully submitted

TYRL W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

TWB:DA