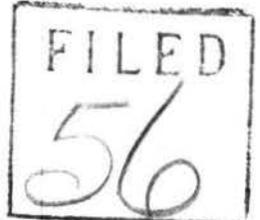


NEWSPAPERS: Newspapers printing notices under section 5599, Laws of Missouri, 1931, page 141, must meet all the requirements of section 13775, Laws of Missouri, 1937, page 432.

March 21, 1939

Mr. T. G. MacLaughlin, President
Santa Fe Savings & Loan Association
916 Baltimore Avenue
Kansas City, Missouri



Dear Sir:

This department acknowledges receipt of your letter of March 7th, wherein you request an opinion relative to the following facts:

"Inasmuch as Building and Loan Associations are under the supervision of the State Bureau of Building and Loan Supervision, we respectfully request your opinion as to the construction of section 5599 R. S. Mo. 1929, as Amended Laws of Missouri, 1931, Page 146 with respect to the provision for foreclosure of mortgages and deeds of trust 'according to law'.

"We assume this expression refers to the general law respecting foreclosure, but our precise question is as to whether or not a notice published in a newspaper, which newspaper may not be able to comply with the provisions of Section 13775, Laws of Mo. -P 431 1937, is valid. For example, if a newspaper did not have a list of bona fide subscribers or was not admitted to the post office as second class matter, would a notice published therein be valid?

"Our reason for requesting this opinion is that recently there have been filed in Independence, Missouri, two cases seeking to set aside foreclosures on the ground that the newspaper in which the notices were published was not qualified under the law.

"We have several mortgages in Independence, and we wish to be sure of our ground in the event of foreclosure."

Section 5599 R. S. Missouri, 1929, was repealed along with chapter 35, of article 2, relating to Building and Loan Supervision, and the entire chapter has been re-enacted by the General Assembly, Laws of Missouri, 1931, p. 141, et seq. The pertinent part of said section as re-enacted, page 152 Laws of Missouri, 1931, is as follows:

"In case any borrowing shareholder shall become delinquent in his obligations to the association as provided by his loan contract, in a sum equal to or exceeding three months dues and interest, the association may proceed, according to law, to foreclose the mortgage or deed of trust given by such borrower as security for the loan. All other mortgages and deeds of trust, including purchase money, mortgages or deeds of trust, given to the association, may be foreclosed according to the general law as to foreclosure of mortgages and deeds of trust. In the event of such foreclosure, the defaulting borrower, in addition to the amount loaned, as shown by the bond and mortgage or deed of trust given by such borrower, shall be charged with all dues, interest, premium and fines, and other sums due and in arrears, and shall have and be given credit for the withdrawal value of the shares pledged and transferred by him as aforesaid, in accordance with the rule hereinafter provided for the withdrawal and cancellation of shares."

This section uses the expression "according to law" in the first sentence, and "according to the general law as to foreclosure of mortgages and deeds of trust." We think both refer to the general law as to foreclosure of mortgages and deeds of trust. In fact, if a deed of trust is given under the Missouri law relating to deeds of trust, of course the foreclosure must be according to the law relative to foreclosure of mortgages under deeds of trust. We therefore come to the conclusion that there is no distinction between "ac-

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ording to law" and "according to the general law;" relative to deeds of trust, as used in said section 5599.

The clause "according to law" has been defined in the decision of Missouri State Life Insurance Company, 276 S. W. 757, De Rockbraine School District v. Northern Casualty Company, 155 N. W. 10, Hirst v. Xeter Realty, 70 So. 339.

Having brought the terms of the statute within the provisions of section 13775, Laws of Missouri, 1937, page 431, we next determine your question as to whether or not a newspaper must comply strictly with the terms of said section, when a deed of trust as contained in said section 5599 is foreclosed. We are enclosing two copies of opinions relating to the construction of section 13775; one being to Hon. Dwight H. Brown, Secretary of State, Jefferson City, Missouri, dated February 7, 1938, the other to Hon. C. R. Hayes, Prosecuting Attorney, Salem, Missouri, dated February 20th, 1936. These copies are enclosed for the purpose of showing that we have always placed strict construction on the terms of section 13775, as set forth in the copies of the opinions.

CONCLUSION

We are of the opinion that the terms of section 13775, Laws of Missouri, 1937, page 431, are mandatory on the newspaper printing legal notices and must be strictly complied with in every respect. In other words, if a newspaper cannot meet the requirements as contained in said section, then the notices published in said newspaper would be invalid.

Yours very truly,

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

OLLIVER W. NOLEN
Assistant Attorney General

OWN:RW