

MORTGAGES AND
DEEDS OF TRUST:

Recorder of Deeds of City of St. Louis must record trustee's deed under a foreclosure, where the note presented at the time was unpaid and gave the trustee authority to foreclose and give trustee's deed.

January 17, 1940

Hon. Edgar H. Wayman
City Counselor
St. Louis, Missouri



Dear Sir:

We are in receipt of your request for an opinion, dated January 4, 1940, which reads as follows:

"The Recorder of Deeds of the City of St. Louis has requested this office to secure an opinion from you in regard to the interpretation of Section 3096a, Laws of Missouri 1933, page 192, in respect to a trustee's deed filed for recording, where there were several principal notes, but only a portion of them was presented as unpaid. The terms of the instrument are as follows:

"By their deed of trust dated June 13, 1930, and recorded in the office of the Recorder of Deeds for the City of St. Louis, Missouri, in Book 5047, at page 124, Bertha P. Tucker and A. A. Tucker, her husband, conveyed to Max Haas, trustee, certain real estate situate in the City of St. Louis, which conveyance was made in trust to secure the payment of one (1) principal note

for \$500.00 due in 30 months, two (2) principal notes each for \$1,000.00 due in 3 years, one (1) principal note for \$1,500.00 due in 3 years, and two (2) principal notes each for \$2,000.00 due in 3 years, and thirty-five (35) semi-annual interest notes, all of which interest notes have been paid, as well as said principal note for \$500.00. The time of payment of said five (5) principal notes due in three (3) years after their date was extended for three (3) years after their maturity, with interest at 6% per annum, payable semi-annually. All of said principal notes were, by endorsement thereon, identified by the said Recorder of Deeds as being the notes secured by said deed of trust, and were endorsed and delivered by Joseph H. Schnietz, the payee therein, to divers persons,

"Said deed of trust provides that 'if either one of said notes, or any part thereof, be not so paid at maturity, according to the tenor of the same, or if said taxes, general and special, be not promptly paid when due, * * *, ' the trustee may proceed to sell said property at public vendue or outcry at the east front door of the Court House in the said City of St. Louis, to the highest bidder for cash, * * * and upon such sale shall execute a deed in fee simple of the property sold to purchaser or purchasers thereof, etc.

"Default having been made in payment of said five (5) principal notes in three (3) years, which was extended as aforesaid for three (3) years until

June 13, 1936, as well as in the payment of certain interest, general and special taxes, the trustee in said deed of trust proceeded to sell said mortgage of property at the request of the holder of two (2) of said principal notes for \$1,500.00 and \$2,000.00 respectively presented to the trustee, and did sell said property on July 20, 1939, to Gustav M. Shoemann and thereupon the trustee made and executed his deed as trustee to the said Shoemann. Thereafter the said Shoemann presented said trustee's deed, for recording, to the office of the said Recorder of Deeds, who declined to accept said deed for record in his office on the ground that all of said five (5) unpaid principal notes must, under the Act approved April 18, 1933, (being Section 3096A of Session Laws of Missouri, page 192) be presented to the Recorder for his notation thereon, as provided by said Act.

"The Recorder was unwilling to accept the trustee's deed for recording, due to the fact that he was advised that the notes were not payable to bearer, but were payable to individuals, and were in the hands of several owners. The Recorder will appreciate advice from you as to whether, under said section, he may accept the trustee's deed for record, under the circumstances."

Section 3096b, Session Laws of 1933, page 191, which only applies at the present time to the city of St. Louis and St. Louis County, provides that it is mandatory that notes, bonds and other securities under mortgages and deeds of trust must be identified by the Recorder of Deeds when the mortgage or deed of trust is presented for filing.

The general laws, Section 3096 R. S. Missouri, 1929, in regard to identification of notes and other securities under mortgages and deeds of trust are not mandatory but only permissible at the option of the payee of said instruments.

Section 3063 R. S. Missouri, 1929, partially reads as follows:

"Deeds of trust in the nature of mortgages of lands may, in addition to being fore-closable by suit, be also foreclosed by trustee's sale at the option of the holder of the debt or obligation thereby secured and the mortgaged property sold by the trustee or his successor in the same manner and in all respects as in case of mortgages with power of sale; * * * "

Section 3075 R. S. Missouri, 1929, reads as follows:

"All mortgages of real or personal prop-erty, or both, with powers of sale in the mortgagee, and all sales made by such mortgagee or his personal repre-sentatives, in pursuance of the provisions of such mortgages, shall be valid and bind-ing by the laws of this state upon the mortgagors, and all persons claiming under them, and shall forever foreclose all right and equity of redemption of the property so sold: Provided, that nothing herein shall be construed to affect in any way the rights of a tenant to the growing and unharvested crops on lands foreclosed as aforesaid, to the extent of the interest of such tenant under the terms of contract or lease between such tenant and the said mortgagor or his personal representatives."

The above section permits the mortgagee to foreclose in pur-suance of the provisions of such mortgage. Under the statement in your request it is provided that the mortgagee or trustee may foreclose upon the non-payment of either of said notes.

Section 3096a, Session Laws of Missouri, 1933, page 193, only applies to the city of St. Louis and St. Louis County at the present time, and partially reads 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.'
* * * * *

Under the above section it is specifically provided that before the Recorder of Deeds should file a trustee's deed he should demand all of the principal note or notes, or other principal obligations which were unpaid when the foreclosure sale commenced; but if any of the notes are lost the owner of the principal notes may make an affidavit describing them and that they have been lost. The above partial section only applies to general mortgages or deeds of trust which have no special clause as to the right of

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the trustee to foreclose in case of the non-payment of one of the principal obligations and it is mandatory that all principal notes or obligations be presented before the Recorder of Deeds shall file a trustee's deed issued by the trustee or other officer given the power of sale and foreclosure.

Section 3096a, Session Laws of Missouri, 1933, page 193, partially reads as follows:

"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."

This partial section sets out a different exception than is set out in the partial section above set out. In this latter partial section, section 3096a, it is specifically stated that where the trustee's deed or mortgagee's deed under power of sale under any deed of trust or mortgage which provided for the issuance of more than one principal note or bond and also provided for the foreclosure on the non-payment of any one or any number of notes less than the full number of notes or bonds set out in the mortgage, or deed of trust, all that would be necessary would be the presentation of the note or notes described under the mortgage or deed of trust that is necessary for the trustee or other officer foreclosing to begin foreclosure for the non-payment of the obligation or obligations. It will be noticed in the deed of trust set out in your request that there were

five principal notes, in the amount of \$1,500.00, \$2,000.00, \$2,000.00, \$500.00 and \$500.00. It will also be noticed that the trustee in beginning the foreclosure proceeded to foreclose upon the non-payment of only two principal notes of \$1,500.00 and \$2,000.00, respectively. It will also be noticed that the deed of trust provides that if "either one of said notes or any part thereof be not so paid at maturity * * * the trustee may proceed to sell said property at public vendue etc., * * *." That clause, in the opinion of this Department, was placed in the deed of trust so as to come within the laws of Section 3096a, supra, as set out in exception to first part of Section 3096a. According to the general law in the first part of Section 3096a, it would have been necessary for the person offering the trustee's deed for recording, to present all of the notes or an affidavit from the owner of all the principal notes, that some, or all of the principal notes have been lost. The exception at the latter part of Section 3096a was enacted specifically for the purpose of having the same deed or mortgage cover more than one principal note, and also for the purpose of setting out different grounds for the trustee or other officer to act upon the non-payment of the obligations. This exception specifically requires the Recorder of Deeds to record the trustee's deed where the trustee has completed the foreclosure under all of the terms set out in the mortgage or deed of trust. We call your special attention to a part set out in the exception of 3096a which reads as follows:

"* * * 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. * * *"

According to your request all that was required for the trustee to sell the property under foreclosure sale was the non-payment of either one of said notes.

Hon. Edgar H. Wayman

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CONCLUSION

In view of the above authorities, it is the opinion of this Department that the trustee's deed, as set out in your request, should be filed for record by the Recorder of Deeds upon the presentation of the two principal notes for \$1,500.00 and \$2,000.00, respectively, and it is not necessary to obtain an affidavit of the owner of the other notes as set out in Section 3096a, supra.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

TYRE W. BURTON
(Acting) Attorney General

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