

RECORDER OF DEEDS:
LEASE:

Lease is instrument in writing affecting real estate as set out in Section 59.360 RSMo 1949. Recorder of Deeds not authorized to permit either party to a lease to alter the same after it has been delivered to the recorder for recording.

Hon. Ernest Troutman,
Prosecuting Attorney
Carroll County,
Carrollton, Missouri.

July 27, 1951.



Dear Sir:

This will acknowledge receipt of your recent request for an official opinion on questions which you present as follows:

"A number of oil and gas leases signed and acknowledged by the lessors (only) were filed for record in the office of the Recorder of Deeds of Carroll County. Some of the leases were acknowledged more than twelve months prior to the recording date, and were held by the Recorder as per Section 59.360 R. S. Mo. 1949. The lessee now desires to have the leases signed and acknowledged on behalf of the lessee.

"The questions involved are:

"Do these instruments properly come under 'instruments of writing affecting real estate, as set out in Section 59.360 R. S. Mo. 1949?'

"If so, does the recorder have any authority to permit the lessee to sign and acknowledge such instruments after being recorded.

"If so, and the leases acknowledged less than 12 months prior to the recording date, is the proper procedure to have the entire lease re-recorded or record only the additional acknowledgment?"

Your questions will be discussed in the order presented by you.

1. Do these instruments properly come under "instruments of writing affecting real estate, as set out in Section 59.360 RSMo. 1949?"

Section 59.330, RSMo 1949, enumerates in part the instruments which it shall be the duty of the recorder to record in the following words:

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"It shall be the duty of recorders to record:

"(1) 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;"

Section 59.360 provides that instruments in writing affecting real estate, which purport to have been signed and acknowledged more than twelve months prior to the time the same shall have been presented for record, shall be retained in the recorder's office, subject to the inspection of all parties interested, for one year next succeeding the time such instrument shall be recorded, in the following words:

"Whenever the recorder of deeds, or any other person acting as recorder of deeds, in any county in this state, shall record any instrument of writing affecting real estate, which purports to have been signed and acknowledged more than twelve months prior to the time the same is presented for record, he shall retain such instrument of writing in his office, subject to the inspection of all parties interested, for one year next succeeding the time such instrument shall be recorded:* * *".

A written lease properly is an instrument affecting real estate which the recorder is authorized to record and as such "writing affecting real estate" should be retained by the recorder, subject to the inspection of all parties interested, for one year next succeeding the time of recording.

In the case of Faxon v. Ridge, 87 Mo. App. 299, the court held that a leasehold interest is a chattel real, and at l.c. 308, mentioned the recording of leases in the following words:

"It (the statute) reads as follows: 'Every instrument in writing that conveys any real estate, or whereby any real estate may be affected, in law or equity, proved and 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.' RSMo 1899, sec. 923. The lease paper, though a chattel, was certainly an instrument which 'affected' real estate in the sense of that statute. It was therefore necessary to the protection of the lessor, that it be recorded in the real estate records* * *."

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It is the opinion of this office that a written lease should be regarded as an "instrument in writing affecting real estate" and should be disposed of as directed by Section 59.300, RSMo 1949, by the recorder of deeds if such instrument purports to have been signed and acknowledged more than twelve months prior to the time the same is presented for record.

2. "Does the Recorder have any authority to permit the lessee to sign and acknowledge such instruments after being recorded?"

The Recorder is not authorized to alter or allow anyone else to alter an instrument presented to him for recording. The recorder is charged by section 59.400, RSMo 1949, with recording the instrument presented to him "word for word" as it appears at the time it is delivered to the recorder. Said section reads as follows:

"The recorder shall record, without delay, every deed, mortgage, conveyance, deed of trust, bond, commission or other writing delivered to him for record, with the acknowledgment, proofs and certificates written on or under the same, with the plats, surveys, schedules and other papers therein referred to, and thereto annexed, in the order of time when the same shall have been delivered for record, by writing them word for word, in a fair hand, noting, at the foot of such record, all interlineations and erasures and words visibly written on erasures, and noting, at the foot of the record, the day and time of the day, month and year, when the instrument so recorded was delivered to him, or brought to his office for record; and the same shall be considered as recorded from the time it was so delivered."

Under the above section the recorder of deeds must record all instruments delivered to him for record, word for word, and the instrument shall be recorded, and considered as recorded, from the time it was delivered to him for record. There is no provision which would allow the recorder to change the original instrument or permit it to be changed as delivered, or change the reading of the instrument after the writing of the instrument into the record word for word. Neither is the recorder authorized to alter his record to comport to changes made in an instrument after it has been delivered for recording. It appears that in the instance here, the recorder who must keep the lease on file in his office for one year, open to the inspection of parties interested therein, would not be authorized to allow it to be altered in any way. Since the duty is obligatory on the recorder to retain the instrument in question for one

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year, the recorder is not authorized to deliver it to any party until the expiration of that period for alteration or for any other purpose than for inspection.

3. "If so, and on the leases acknowledged less than 12 months prior to the recording date, is the proper procedure to have the entire lease re-recorded or record only the additional acknowledgment?"

The parties, of course, may enter into a new lease affecting the same real property for the purpose of having the execution of the same corrected and present such new instrument for recording, and the recorder would then record the new lease "word for word" as delivered. The recorder would not be authorized to record only the alterations or to change his record to conform to any alterations made in the original record.

We do not herein pass upon the validity of a lease not signed and acknowledged by the lessee since the recorder need not pass on that question as a prerequisite for recording the same.

CONCLUSION.

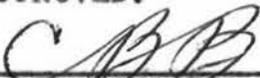
A lease is an "instrument of writing affecting real estate as set out in section 59.360, RSMo 1949.

The recorder of deeds is not authorized to permit instruments delivered to him for recording to be altered by either party to the instrument.

Respectfully submitted,

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APPROVED:



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