

RECORDER OF DEEDS:
COUNTY RECORDER OF DEEDS:
DEATH CERTIFICATES:
RECORDS:

The recorder of deeds has authority
to accept for recording certified
copies of death certificates.

March 6, 1964

OPINION NO. 44 (1964)
OPINION NO. 483 (1963)



Honorable Earl R. Blackwell
State Senator, 22nd District
Hillsboro, Missouri

Dear Senator Blackwell:

You have requested an opinion which may be stated as follows: Is it the mandatory duty of recorders of deeds to accept death certificates for recording?

Section 59.330, RSMo Cum. Supp. 1963, provides in part:

"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; * * *."

This statute must not, however, be regarded as comprehensive because there are many other statutes which provide for instruments to be recorded. (See Cross References to Section 59.330, V.A.M.S.)

It must be regarded as the mandatory duty of recorders of deeds to accept for recording those instruments expressly referred to in Section 59.330 and other statutes. Our search fails to find a statute which expressly requires the recorder to record death certificates and no cases have been found which rule on the recordability of death certificates.

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The problem still remains, however, as to whether the language in Section 59.330, subparagraph (1) would include death certificates.

Consider then the use, function and purpose of death certificates. This subject is dealt with in Chapter 193, "The Uniform Vital Statistics Law". Its purpose is to assemble information in the Division of Health of the State Department of Public Health and Welfare, relating to births, deaths and marriages. Certificates of death must be filed with local registrars (Section 193.130), and local registrars are required to transmit all certificates to the state registrar (Section 193.310). Nothing, however, is found in this Chapter 193 requiring recording by the recorder of deeds.

Deaths and certificates relating thereto relate primarily to a status, condition or existing situation. But also, the title to real estate passes upon death in many instances, and always when the decedent is intestate. The modern trend of authorities relating to recording statutes tends to give a rather liberal construction to them. *Malicka v. Milan*, 320 Mich. 65, 30 NW2d 440, 442; *Davis v. Lewis*, Okla., 100 P.2d 994, 996; *Sadd v. Heim*, 143 Conn. 582, 124 A.2d 522, 524; *Burkett v. Peoples Bank of Biloxi*, 225 Miss. 291, 83 So.2d 185, 189; *Strong v. Clark*, 56 Wash.2d 230, 352 P.2d 183, 184, 185; *State ex rel. State Highway Commission v. Meeker*, 75 Wyo. 210, 294 P.2d 603, 605; *Merrill on Notice*, Sec. 923, 924, pp. 477-479; 45 Am. Jur., Sec. 34, p. 439, Sec. 49, p. 447; *American Law of Property*, Vol. IV, Sec. 17.8, pp. 550, 551, 553.

This likewise seems to be the trend in Missouri. *Schuster v. Schuster*, 340 Mo. 1110, 104 SW2d 353, 357; *Cook v. Tide Water Associated Oil Company*, Mo. App., 281 SW2d 415, 422, note 15.

Under the Missouri statute there is considerable opportunity to give a liberal construction of Section 59.330, and particularly the word "conveyances" and the words "or other instruments of writing, of or concerning any lands and tenements, or goods and chattels".

For example, it has long been accepted practice to record affidavits which recite facts relating to many things including deaths, marriages, children, heirs, and facts relating to family history which, of course, may be very important in the chain of title to real estate but which on their face do not expressly concern lands and tenements. See *Missouri Practice*

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by Volz, Vol. I, Sec. 152 to Sec. 160, pp. 69-76; see also Merrill on Notice, Sec. 938, pp. 495, 496. It can be strongly argued that such affidavits are instruments of writing concerning lands and may be used to clear a record title. Aker v. Lipscomb, 300 Mo. 303, 253 SW 995, 997, 998; Reeves v. Roberts, 294 Mo. 593, 242 SW 956, 957, 958. The only statutes we have found referring to the recordability of affidavits are: Section 59.313, applicable to City of St. Louis, which provides for fees to be charged by the recorder for recording affidavits; Section 490.370, relating to affidavit attached to a deed; Section 473.103, relating to recording affidavit respecting distribution of a small estate; and Section 443.060, regarding lost note affidavits.

Death certificates perform in some respects the same functions as affidavits with perhaps somewhat more dignity, and hence may be regarded either as conveyances or instruments of writing concerning lands. Especially this is so if the purpose of recording the death certificate is to show the devolution of title to real estate.

While the requirement for recording instruments accomplishes various purposes, Merrill on Notice, Sec. 919, p. 470, one of the principal purposes of the recording acts was to give constructive notice to subsequent purchasers or mortgagees of facts affecting title to real estate. If the courts of Missouri should eventually hold that death certificates are not recordable under Section 59.330, no harm would result because even though recorded they would, nevertheless, not amount to constructive notice. On the other hand, if the courts should eventually hold that they are recordable under said section, then recorders of deeds might very well be liable for their refusal to record them. We therefore conclude that death certificates should be accepted by recorders of deeds for recording when the person offering them for recordation satisfies the recorder that the purpose is to show a fact concerning the title or interest in lands, tenements, goods, or chattels.

A subsidiary question, however, should be considered. Is there any difference between the original death certificate and a certified copy thereof? While original death certificates must be filed with the local registrars and ultimately with the state registrar, as pointed out, Section 193.180, RSMo 1959, requires the state registrar to furnish a certified copy on request, and such certified copy must be considered for all purposes the same as the original. Hence,

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no distinction may be made merely because a certified copy is presented for recording rather than the original. Schuster v. Schuster, 340 Mo. 1110, 104 SW2d 353, 357. The fact that the death certificate is not acknowledged as a deed is acknowledged is not ground for refusal to record it.

CONCLUSION

The recorder of deeds has authority to accept for recording certified copies of death certificates.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, J. Gordon Siddens.

Yours very truly,


THOMAS F. EAGLETON
Attorney General