

COUNTY RECORDER OF DEEDS:
SURVEYORS:

When an otherwise properly recordable instrument is presented and there are maps, plats, surveys, or other documents attached it is the duty of the recorder to record the instrument regardless of whether the maps, plats, surveys, or other documents are affixed with the seal and signature of a land surveyor.

OPINION NO. 83

June 8, 1965

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



Dear Senator Balckwell:

We have your request for an opinion of this office on the question of whether a map, plat, survey, or other document that is attached to another properly recordable instrument must bear the personal seal and signature of a land surveyor as required by Section 344.120, RSMo 1959.

Section 344.120 reads as follows:

"It shall be unlawful for the recorder of deeds of any county, or the clerk of any city or town, or the clerk or other proper officer of any school, road, drainage, or levee district, or other civil subdivision of this state, to file or record any map, plat, survey or other document prepared by any land surveyor, which does not have impressed thereon, and affixed thereto, the personal seal and signature of the registered land surveyor by whom, or under whose authority and direction, the map, plat, survey, or other document was prepared."

This section is a part of Chapter 344, Land Surveyors, which regulates land surveying for compensation by establishing qualifications and registration for land surveyors. Section 344.110, RSMo 1959, in requiring a seal, says:

"Every registered land surveyor shall procure a personal seal, in form approved by the professional engineering division of the board, and shall affix the seal, and his signature

upon all maps, plats, surveys, or other documents, before the delivery thereof to any client, or before offering to file or record any such map, plat, survey, or other document, in the office of the recorder of deeds of any county, or in the office of the city clerk of any city or town, or with the clerk or other proper officer of any school, road, drainage, or levee district, or other civil subdivision of this state."

Section 344.120, then, helps to regulate land surveying by the method of not allowing documents prepared by land surveyors to be recorded without a seal and signature, and Section 344.130, RSMo 1959, makes it a misdemeanor for anyone who violates the provisions of Chapter 344. However, Section 344.120 does not intend to make the recorder the chief enforcer of Chapter 344. Nor does Chapter 344 purport to be a recording act so that a map, plat, etc., is valid only with a seal and signature. This is borne out by the enclosed copy of an Attorney General's opinion to the Honorable J. A. Appelquist, dated June 23, 1959, where this office said that the recorder could not refuse to accept a plat on the sole ground it does not have a seal and signature of a registered surveyor.

But Section 344.120 does not itself distinguish between a map, plat, etc., filed on its own accord and one filed as part of a properly recordable instrument.

Chapter 59 is the recording law of Missouri for all instruments concerning land. Section 59.330, RSMo Cum. Supp. 1963, reads as follows:

"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; . . ."

And, Section 59.400, RSMo 1959, 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."

Section 59.660, RSMo 1959, makes it a misdemeanor for the recorder to willfully neglect his duties under this chapter and Section 59.650, RSMo 1959, provides for double damages for losses due to the recorder's neglect of his duty to record.

This recording act helps to facilitate Chapter 442, Titles and Conveyances of Real Estate, so that subsequent purchasers and encumbrances can safely determine title to land. Section 442.020, RSMo 1959, provides:

"Conveyances of lands, or of any estate or interest therein, may be made by deed executed by any person having authority to convey the same, or by his agent or attorney, and acknowledged and recorded as herein directed, without any other act or ceremony whatever."

Section 442.240, RSMo 1959, provides that notice is imparted from the recording of such a deed and Section 442.380, RSMo 1959, directs that such instruments shall be recorded.

Thus under Chapters 59 and 442 it is the duty of the recorder to record a properly recordable deed when presented, and there is no requirement for a seal and signature of a surveyor to be on a map, plat, etc., attached to a deed in order to make the deed recordable. In fact, Section 59.400 says that a proper deed shall be recorded without delay "with the plats, surveys, schedules and other papers therein referred to, and thereto annexed."

If Section 344.120 were read to include all maps, plats, etc., attached to an otherwise properly recordable deed then a conflict could arise in that the recorder would commit a misdemeanor for recording such instrument without a seal and signature on the maps, plats, etc., and yet if he should fail in his duty to record promptly he will also commit a misdemeanor, and face possible liability for double damages.

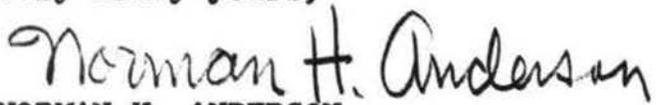
It is the opinion of this office that when Section 344.120 says that it is unlawful for the recorder ". . . to file or record any map, plat, survey or other document . . ." this means those documents which are filed or recorded in their own right and not as part of an otherwise recordable deed which affects title. Support for this distinction is offered by Section 344.110 which requires a seal or signature on all maps, plats, etc., "before the delivery thereof to any client, or before offering to file or record." Surely the client has no duty to enforce Chapter 344, and when that client presents the map, plat, etc., as part of a deed affecting title the recorder's first duty is to record that deed, with attachments, immediately on presentation.

CONCLUSION

It is the opinion of this office that when an otherwise properly recordable instrument is presented and there are maps, plats, surveys, or other documents attached it is the duty of the recorder to record the instrument regardless of whether the maps, plats, surveys, or other documents are affixed with the seal and signature of a land surveyor.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Walter W. Nowotny, Jr.

Very truly yours,


NORMAN H. ANDERSON
Attorney General