

RECORDERS:
ACKNOWLEDGMENTS:
PHOTOCOPIES:

Recorder must accept for recordation all instruments that are defined by Sec. 59.330, V.A.M.S. and in proper form duly acknowledged. Instrument whose acknowledgments are reproduced are not acceptable for filing.

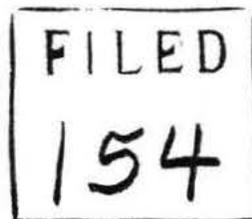
Photocopies or reproduction of acknowledgments are not acceptable on instruments offered for recordation.

Photocopies of acknowledgments are not acceptable for recordation even though a notary seal is affixed.

OPINION NO. 154

June 22, 1965

Honorable George C. Baldrige
Prosecuting Attorney
Jasper County Court House
Joplin, Missouri



Dear Mr. Baldrige:

The question submitted by you (as restated by this office) whether the recorder of deeds must accept for recording copies of the original instrument on which the signatures to said documents were photo reproductions of the originals (even though a notary seal may have been attached) has been considered by this office. Must the recorder indicate on his records in some manner that the instrument recorded has a facsimile or photocopy acknowledgement?

The pertinent portions of the statutes, in substance, are set forth below:

Section 59.330, V.A.M.S. What shall be recorded.

"(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 442.380, V.A.M.S.

"Every instrument in writing that conveys any real estate, or whereby any real estate may

be affected, in law or equity, proved or acknowledged and certified in the manner herein prescribed, shall be recorded in the office of the recorder of the county in which such real estate is situated."

Section 442.130, V.A.M.S. Execution of deeds and other conveyances.

"All deeds or other conveyances of lands, or of any estate or interest therein, shall be subscribed by the party granting the same, or by his lawful agent, and shall be acknowledged or proved and certified in the manner herein prescribed."

Section 442.210, V.A.M.S. Certificate of acknowledgment-- contents.

"3. (In all cases add signature and title of the officer taking the acknowledgment.)"

Section 442.190, V.A.M.S. Certificate, how made.

"Such certificate shall be

* * * * *

"(3) When granted by an officer who has a seal of office, under the hand and official seal of such officer;"

Section 59.330 V.A.M.S. provides what instruments shall be recorded by the recorder. If the instrument is subscribed as provided in Section 442.130 V.A.M.S. and acknowledged as provided in Section 442.190 V.A.M.S., the Supreme Court in *Stevens v. Hampton et al* (1870), 46 Mo. 404, l. c. 408, held:

* * * * *

"In view, then, of the acknowledgment as affecting the right of record and the question of constructive notice, the following would seem to be a reasonable rule: that when the recorded instrument shows upon its face that the acknowledgment was taken by a party, or party in interest, it is improperly recorded, and is no constructive notice; but when it is fair upon its face it is the duty of the register to receive and record it, and its record operates as notice notwithstanding there may be some hidden defect."

As stated in the case (supra), when the instrument is fair on its face, it is the duty of the recorder to receive and record it. On the other hand, if the instrument on its face is obviously defective, as where there is no completed acknowledgment, it is the duty of the recorder to reject the instrument for recordation.

See Williams v. Butterfield et al (1904), 182 Mo. 181, 81 S.W. 615, affirmed in part (1908), 214 Mo. 23, 114 S.W. 13, where it was held:

"As the record in the court then appeared, there was no certificate of acknowledgment by the grantor on said deed. It was held, and we still think correctly, that by reason of the absence of said acknowledgment, said deed was not entitled to be recorded * * *."

See also Heintz v. Moore (1912), 246 Mo. 226, 151 S.W. 449.

The reason seems to be that where recording is provided by statute for specific instruments constructive notice is imposed on all the world. Secondly, parties cannot be expected to search records for that which does not belong there.

The word "shall" as used in Section 59.330 is mandatory, provided the instrument meets the test of the statute, i.e., Sections 442.020, 442.130, 442.380 and 442.190 V.A.M.S. Thus, under 442.130 V.A.M.S. relating to the deed or other conveyance of land or estate or interest therein, a party or his agent must subscribe to the instrument. Such subscription may be by signature or mark duly certified. The court held in Woods v. Payne (Supreme Court 1947), 206 S.W. 2d 355, 1. c. 558:

"* * * Whether or not Mrs. Payne actually signed the deed is not all important. There is sufficient evidence to consider the deed as more than a mere evidentiary fact for, if she did not sign the deed, the record justifies findings that her signature appeared there with her approval and authorization and she acknowledged it as her free act and deed. 26 C.J.S., Deeds, § 34a; Radley v. Meeks, 178 Mo. App. 238, 240, 165 S.W. 1192, 1193 [3]; State v. Carlisle, 57 Mo. 102, 105."

The requirement and necessity for the validity of acknowledgments should be readily apparent as a matter of public policy as a means of reducing possible frauds. The sanctity of records establishing title to real estate or interests therein has a strong historical background. When the grantor could not write, it was the seal of the notary, and his acknowledgment thereon in early English history that guaranteed the validity of a deed

or other similar instruments and so it is today. Public policy demands that the statutes be rigidly adhered to in order to protect the records.

Would a photo reproduction of the acknowledgment with a seal attached of the notary constitute a substantial compliance with the statutes pertaining to acknowledgments? The court stated in *Hatcher v. Hall et al* (1956), 292 S.W. 2d 619, 1. c. 622:

"* * * But, although the law requires nothing more than such substantial compliance, it is satisfied with nothing less. And, since the power to take acknowledgments is derived from the statutory provisions pertaining thereto and acknowledgments may be taken only by a person designated by statute [1 C.J.S., Acknowledgments, Section 41, p. 333], we do not impose 'hypercritical requirements of technical nicety' [*McClure v. McClurg*, 53 Mo. 173, 175] in concluding, as we do, that 'no rational liberality of construction can cure' [*Cabell v. Grubbs*, 48 Mo. 353, 357] the patent defects in the 'acknowledgment' to the lease in the instant case, which does not even indicate whether the individual purporting to take such 'acknowledgment' in 1941 was a person then authorized so to do. Section 3408, RSMo 1939. Lacking an acknowledgment substantially complying with statutory requirements, the lease was not entitled to record [see Sections 442.380 and 59.330 (1)], and recordation thereof did not impart constructive notice under Section 442.390 to plaintiff, a subsequent purchaser for value."

In John's "American Notaries" (4 Ed.) p. 160, it states that "The notary's signature should be properly written and affixed."

Thus in *Salazar v. Taylor* (Colorado-1893), 33 Pac. 369, 370, it was held:

"The word 'hand' in legal parlance, is often used to denote handwriting or written signature, as 'witness my hand and seal' or 'witness my hand' if the instrument be not under seal. The word is thus used in our statutes. In certain cases, a judge or justice of the peace is authorized to issue a warrant under his hand. This undoubtedly means a writ or process in writing

signed by the judge or justice, and when thus issued it is declared to be valid, without any seal."

In *Pinkham v. Jennings* (Maine--1923), 122 Atlantic 873, it was held:

"While the seal upon a writ is a matter of substance and not amendable * * *, it emphatically follows that the signature of the clerk of courts or his deputy, which is required to be fixed by his own hand (R.S.C. 82 §5) is indispensable to the validity of any writ issuing from the court of which he is clerk."

In *State ex rel. Drucker v. Reichle* (Ohio-1848), 81 N.E. 2nd 735, 736, it was held under their statute, the court must approve journal entries of judgments "in writing" before the clerk may file the same:

"The clerk must therefore make certain that the journal entry was in fact approved 'in writing' by the judge and he should not be subjected to chance for error that might result from the unauthorized use of a rubber stamp."

The reason for the rule against accepting facsimiles or reproductions of acknowledgments is that the record should not be subjected to the chances of error that might result from the fraudulent use of a reproduced signature. A seal may be affixed fraudulently, and the use of such seal by itself does not import a verity. As a matter of public policy and to secure the sanctity of records, only those qualified documents under 59.330 V.A.M.S., when duly acknowledged, should be accepted for recordation.

As stated in 1 C.J.S., p. 847:

"It would seem that an official certificate cannot exist without the signature of the officer making it; for this reason the subscription of a certificate of acknowledgment by the officer making it is to be regarded as a part thereof, and statutes requiring subscription must be complied with."

In view of the disposition of the first question presented by the prosecuting attorney (*supra*), the second question presented by you is moot and need not be answered.

Honorable George C. Baldrige -6-

The review purports to deal only with general guidelines for recordation. Each instrument presented for recording is a separate problem which must be resolved on a case-by-case approach and determined on its individual merits.

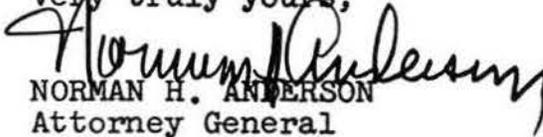
CONCLUSION

It is the opinion of this office that (1) the recorder may not properly accept for recordation any instrument affecting title to real estate under the statutes that does not meet the requirements of the statute as to form and content; (2) that photo reproductions of the signature of the notary on the acknowledgment, by whatever means, even though a seal may have been affixed, does not meet the requirements of Section (3) of 442.190 V.A.M.S. so as to entitle such instrument recordation.

It is emphasized these conclusions are very broad in scope and have as their purpose the promulgation of general guidelines. However, a caveat is urged to the effect that the eligibility for recordation of a particular instrument is a separate, specific question that must be determined on the facts in each particular instance. There is no formula to answer all the questions on this subject.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, R. C. Ashby.

Very truly yours,


NORMAN H. ANDERSON
Attorney General