

December 21, 1971

OPINION LETTER NO. 220
Answer by letter-Romines

Honorable James S. Stubbs
Prosecuting Attorney
Livingston County Courthouse
Chillicothe, Missouri 64601

Dear Mr. Stubbs:

This is in reply to your request for an opinion of this office concerning the recording of satisfaction of certain deeds of trust by the recorder of deeds of Livingston County, Missouri.

In your request you state that the recorder of deeds has been requested to satisfy certain deeds of trust without the production of the promissory note which secures those deeds of trust. Two situations have arisen which you state as follows:

"1. Where the obligee and holder of the promissory note does not wish to cancel the note, but simply wishes to release the security interest in the form of a Deed of Trust, can the Deed of Trust be released leaving the promissory note intact and if so by what method?

"2. Where the obligation secured by the Deed of Trust has been satisfied, can the obligee by Deed of Release, effect a complete release of the Deed of Trust without either producing the promissory note or making affidavit as is directed by Section 443.060 (2) RSMo 1969?"

The conclusions which we draw, relate strictly to the duties of the recorder of deeds, and thus the controlling provisions of Missouri law are Sections 443.060 and 443.090, RSMo 1969, as you have recognized in your opinion request. Those sections state:

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"1. If any mortgagee, cestui que trust or assignee, or administrator of the mortgagee, cestui que trust or assignee, receive full satisfaction of any mortgage or deed of trust, he shall, at the request and cost of the person making the same, acknowledge satisfaction of the mortgage or deed of trust on the margin of the record thereof, or deliver to such person a sufficient deed of release of the mortgage or deed of trust; but it shall not in any case be necessary for the trustee to join in such acknowledgment of satisfaction or in such deed of release; and provided further, that when any mortgage or deed of trust shall be satisfied by a deed of release, the recorder shall note on the margin of the record of such deed of trust the book and page where such deed of release is recorded. In case satisfaction be acknowledged by the payee or assignee, or in case a full deed of release is offered for record, the note or notes secured shall be produced and canceled in the presence of the recorder, who shall enter that fact on the margin of the record and attest the same with his official signature; and no full deed of release shall be admitted to record unless the note or notes are so produced and canceled, and that fact entered on the margin of the record and attested as above provided.

"2. If such note or notes are not presented for cancellation for the alleged reason that they have been lost or destroyed, the recorder, before allowing any entry of satisfaction to be made on the record or any deed of release to be placed on the file or record, shall require the cestui que trust named in the mortgage or deed of trust desired to be released or his legal representatives, to make oath, in writing, stating that the note or other evidences of debt named in the mortgage or deed of trust sought to be released have been paid and delivered to the maker thereof or his representative, and the recorder shall also require the maker of such note or notes, or his legal representative, to make affidavit, in writing, that the note or notes in question have been paid, and cannot be produced because lost or destroyed, and that they are not then

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in the possession of any person having any lawful claim to the same; provided, however, that, if such note or notes shall not have been delivered to the maker or his legal representative, the affidavit so required of the cestui que trust or his legal representative shall recite that the note or other evidence of the debt named in said mortgage or deed of trust has been paid and cannot be produced because lost or destroyed, and that they are not then in the possession of any person having any lawful claim to the same, and the term 'legal representatives' as used in this section shall include assigns; and the affidavit of the maker of such note or notes or his legal representative shall recite that said note or notes have been paid; the affidavits so required shall be recorded in the same manner as deeds, in a permanent record, and the recorder shall make a notation upon the margin of the mortgage so satisfied giving the number of the book and page wherein said affidavit has been recorded; provided, that nothing in this chapter shall be so construed as to require that any interest coupon notes shall be produced and canceled in the presence of the recorder, but that all such interest coupon notes shall conclusively be taken and be deemed to have been paid in full, when the principal note described in the mortgage or deed of trust shall have been produced and canceled in the presence of the recorder as provided for in this chapter." (Emphasis ours)
Section 443.060

"In case any person desires to release any part of the property described in any deed of trust or mortgage by marginal record or deed of release, he shall be permitted to do so by the recorder on presentation to the recorder of the notes or other obligations evidencing the principal of the debt secured thereby, or accounting for them by affidavits or otherwise as now or hereafter provided by law in the case of full release, and the recorder shall note the fact of such partial release on the margin of the record of such deed of trust or, if such release is made by deed of release, shall note the fact of the filing for record of such partial release, and of the

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presentation of such notes or other obligations, or accounting therefor, on such notes or obligations in substantially the following form:

'See partial release dated _____ Recorder'

and on the margin of the record of such deed of trust or mortgage, but shall not cancel such notes or other obligations; and nothing in this section shall be construed as making it necessary for any trustee named in the mortgage or deed of trust to join in such partial deed of release." Section 443.090

As the emphasized portions of Section 443.060 set out above makes clear, when satisfaction is to be acknowledged by the payee, or assignee, or in case a full deed of release is offered for record, before the recorder of deeds, the note or notes secured shall be produced and canceled in the presence of the recorder; a requirement that the note or notes be produced and notation of partial release made on such note or notes by the recorder is to be found in Section 443.090. Quite clearly the presentation of the note or notes secured must be made before the recorder. These sections admit of one exception. If by affidavit, the cestui que trust, or his legal representative, states that the note or notes have been paid and have been lost or destroyed, the recorder may note satisfaction. See also in this regard Opinion of the Attorney General, No. 82, Short, 12-8-38, a copy of which is attached.

You have also forwarded a form deed of release which has been presented to the recorder for filing [attached as appendix A] and ask whether this purported deed of release may be filed. Our conclusion is that the presentation of such purported deed of release does not comply with the requirements of Section 443.060 because the notes have not been produced and no affidavit has been filed showing the notes have been lost or destroyed.

In view of the foregoing discussion, it is the opinion of this office, that, the recorder of deeds is without authority to make the requisite margin notations pursuant to Sections 443.060(1) and (2) and 443.090, RSMo 1969, dealing with the satisfaction of deeds of trust, or record full or partial deeds of release, absent the presentation of the note or notes secured by the deed of trust involved, or presentation of affidavit that the notes have been lost or destroyed.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 82
12-8-38, Short