

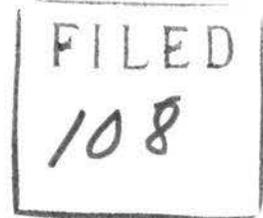
RECORDER OF DEEDS:

A quit claim deed of release in full or partial satisfaction of a deed of trust is not subject to the user fee charge of one dollar by the recorder of deeds under Section 59.319, RSMo 1969.

OPINION NO. 108

March 22, 1972

Honorable Daniel M. Buescher
Prosecuting Attorney
Franklin County
P. O. Box 229
Union, Missouri 63084



Dear Mr. Buescher:

This opinion is in response to your request in which you ask:

"Is a Quit Claim deed of release including the complete legal description of the property which is being completely or partially released an instrument conveying interest in real property such as to subject it to the 'user fee of \$1.00 under Section 59.319 of RSMo. 69.'"

You further state that:

"Franklin County's Recorder uses a Quit Claim deed, with complete legal description, and the phrase 'This Deed is made in _____ release of, and _____ satisfaction for a certain Deed of Trust, dated _____, recorded in Book _____ page _____ of the _____ County, Missouri records.' As this instrument appears to be both a Quit Claim deed on which the user tax would seem to apply and a deed of release which the user tax would not apply, the Recorder is unable to ascertain whether or not he should, in fact, charge such fee."

Section 59.319, RSMo 1969 states:

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"A user fee of one dollar shall be charged and collected by every recorder in this state, over and above any other fees required by law, as a condition precedent to the recording of any instrument conveying real property or any interest therein. The fee shall be forwarded monthly by each recorder of deeds to the state collector of revenue, and the fees so forwarded shall be deposited by the collector in the state treasury."

It is our understanding that it is a common practice in Missouri to use a quit claim deed with phraseology similar to that which you have quoted to release a deed of trust under Section 443.060, RSMo 1969 et seq. See Missouri Practice, Vol. 6, §707, p.p. 536-537.

Thus we believe that your question is answered by our enclosed Opinions No. 226, dated July 1, 1970 to Jackson and No. 415, dated September 28, 1970 to Holman. In the latter opinion we concluded at l.c. 4 that:

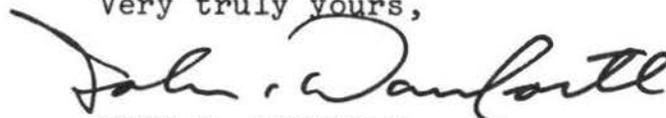
"Since a deed of trust does not convey an interest in real estate, it follows that an instrument which serves to release that lien interest is treated in the same manner. Therefore, any deed of release (whether full or partial) which releases a trustee or mortgagee's lien interest does not convey an interest in real property and does not come within the scope of Section 59.319."

CONCLUSION

It is the opinion of this office that a quit claim deed of release in full or partial satisfaction of a deed of trust is not subject to the user fee charge of one dollar by the recorder of deeds under Section 59.319, RSMo 1969.

The foregoing opinion which I hereby approve was prepared by my assistant, John C. Klaffenbach.

Very truly yours,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 226, 7/1/70, Jackson
Op. No. 415, 9/28/70, Holman