

RECORDER OF DEEDS--Recordability of instrument subordinating lien
of deed of trust to easement--Section 3081, 1931
Session Acts, p. 174

3081 Laws 31

May 15, 1933.



Hon. Thomas A. Matthews
Prosecuting Attorney
Farmington, Missouri

Dear Mr. Matthews:

Since rendering you an opinion on April 19th in regard to the subordination of lien of deed of trust, I have been advised that your recorder of deeds was under the impression that the original note securing the deed of trust and the deed of trust itself should be presented along with this subordination of lien of deed of trust and that he should mark upon the margin of the record, the notes and the deed of trust the words "See partial release dated _____". I presume your recorder is acting under the authority of Section 3081 R. S. Mo. 1929, as amended in the Session Laws of 1931, at page 174. An examination of this amendment, however, indicates that it was the plain intention of the Legislature to require this notation to be made only when some part or parcel of the land secured thereby had been released from the lien of the deed of trust. The legal effect of the instrument entitled "Subordination of Lien of Deed of Trust," which I have examined, wherein the Phoenix Joint Stock Land Bank of Kansas City purported to subordinate its lien on certain real estate in St. Francois County to an easement granted to Frank Sullivan and assigns on the same property, is not to release any part or portion of the property from the lien of the deed of trust but is simply the grant or the acknowledgement of the easement right as has been given by the owners of the property and a subordination of the lien of the deed of trust to a "right" granted. So far as the title holders of the property are concerned the lien of the deed of trust is not changed in any way.

If the recorder of deeds doubts that the party making this release is the true owner of the note secured by the deed of trust he would be within his rights to require the production of the note to satisfy himself as to the right of the Phoenix Joint Stock Land Bank to make the release. However, it is the

May 15, 1933.

opinion of this office the he could not be required by Section 3081 to make a marginal memorandum, "See partial release dated _____, _____ Recorder," either upon the record or upon the note or upon the deed of trust securing said note.

Trusting this clears this up in a satisfactory manner, I am,

Sincerely yours,

HARRY G. WALTNER, Jr.
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK,
Attorney General

HGW:EG