

RECORDER OF DEEDS, ST. LOUIS: Affidavits to release deeds of trust if glued in permanent book comply with the statute relative to recording.

September 15, 1933. /

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Mr. Oliver Senti  
Assistant City Counselor  
City of St. Louis, Law Department  
St. Louis, Missouri

Dear Mr. Senti:

This is to acknowledge your letter which reads as follows:

"Section 3078 R. S. No. 1929 as amended laws of 1933, p 196, contains the following provisions which relate to the recording of affidavits reciting the loss or destruction of notes which are not presented when a deed of trust is released, to wit:

'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:'"

The Recorder of Deeds has asked us to advise him whether this section can be complied with by glueing the affidavits into permanent record books numbered consecutively, the number of the affidavit book and the serial number of the affidavit being entered on the margin of the record of the Deed of Trust being released; on the page to which the affidavit is permanently affixed there is also a printed form of affidavit that the notes

are lost or destroyed, which is to be signed by the person presenting the Deed of Trust for cancellation and sworn to before the deputy recorder.

The foregoing procedure seems to accomplish everything intended by the statute and in addition preserves the instrument itself instead of a mere record of what it contains. I have suggested to the Recorder that this appears to be a substantial compliance with the statute and that he continue to keep his record in this manner until the matter has been passed upon by your office.

Will you please write the City Counselor at your convenience whether, in your opinion, preserving the affidavits in the manner above described complies with the requirements of Section 3078 as amended so that we can advise the Recorder accordingly?"

Section 3078, Laws of Missouri, 1933, page 196, pertains to acknowledgment of satisfaction and release of mortgages and deeds of trust, and contains this provision:

"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 further,

"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;"

Section 11547a, Laws of Missouri, 1933, page 362, provides as follows:

"MANNER OF RECORDING INSTRUMENT--RECEIPT.  
In all cities in this State which now have or which may hereafter have 600,000 inhabitants or more and in Counties now having or which may hereafter have 200,000 and less than 400,000 inhabitants, 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, by writing them, word for word, in a fair hand, or by typewriting them or by photostating them, noting at the foot of such record all interlineations and erasures, and the 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. Except when otherwise provided by law it shall be the duty of the recorder to deliver to the person holding his receipt therefor, every instrument so recorded within sixty days from the date upon which it was presented for recording."

Section 3078, supra, provides that the affidavit shall be recorded in the same manner as deeds, and Section 11547a, supra, provides that deeds shall be recorded "by writing them, word for word, in a fair hand, or by typewriting them or by photostating them, noting at the foot of such record all interlineations and erasures, and the words visibly written on

erasures, and noting, at the foot of the record," etc. We call your attention to the provision relative to photostating. As we understand from your request, the recorder merely takes the original affidavit and glues such into a permanent record book. Does such constitute recording?

The third paragraph of your letter reads:

"The Recorder of Deeds has asked us to advise him whether this section can be complied with by glueing the affidavits into permanent record books numbered consecutively, the number of the affidavit book and the serial number of the affidavit being entered on the margin of the record of the Deed of Trust being released; on the page to which the affidavit is permanently affixed there is also a printed form of affidavit that the notes are lost or destroyed, which is to be signed by the person presenting the Deed of Trust for cancellation and sworn to before the deputy recorded."

What is sought to be accomplished by this would be the same exactly if such were photostated. However, in this case you always preserve the original, which we believe comes within the statutory requirements of recording such.

Corpus Juris, Vol. 18, paragraph 187, page 248, reads:

"Registry acts of a state have been declared to be remedial, and it has been decided that they should be liberally and beneficially construed, etc."

And quoting from page 250, paragraph 194:

"The registration or recording of a deed will not be rendered inoperative by reason of slight and immaterial mistakes therein. \* \* \* \* \*  
It is immaterial that a portion of the record is printed instead of written. \* \*"

We believe the method proposed sufficiently meets the requirements of Section 3078, supra, in recording affidavits. It is our opinion that the affidavits required to be recorded, if

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such are glued into permanent record books numbered consecutively, the number of the affidavit book and the serial number of the affidavits being entered on the margin of the record of the deed of trust being released, and on the page the affidavit is affixed there is also a further printed form of affidavit stating that the notes are lost or destroyed which is signed by the person presenting the deed of trust for cancellation and sworn to, meets the requirements of Section 3078, supra.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK  
Attorney-General.

JLH:EG