

RECORDER - Agreements must be acknowledged by both parties before same can be recorded.

November 1, 1935.

Honorable Oliver Senti
Associate City Counselor
St. Louis, Missouri



Dear Sir:

We have your request of September 28, 1935 for an opinion, which request is as follows:

"Enclosed is a photostatic copy of what purports to be an agreement for an extension of a loan, the original of which was presented to the Recorder of Deeds by the Prudential Insurance Company for recording. As the instrument is signed by only one of the parties, the Recorder is doubtful whether it is a proper one to record under Section 11543.

"Since his question involves the construction of a statute which should be uniformly construed throughout the State, we feel that the Recorder should, for his own protection, be guided by your advice.

"Will you please inform this department whether, in your opinion, the instrument is a proper one for recording, so that we can advise the Recorder of Deeds accordingly?

"If, in your opinion, the instrument should be recorded, the Re-

#2 - Honorable Oliver Senti

order would also like to know whether, in indexing it, he should describe it as an agreement or as a notice."

The photostatic copy attached thereto appears to be "an agreement for an extension of city loan." It appears that the person receiving the extension of the loan has signed the agreement, but that the grantor of such extension has not signed the agreement.

As to a construction of Section 11543, R. S. Mo. 1929 requested in your letter, we quote the pertinent part thereof:

"It shall be the duty of recorders to record: First, 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 * "

It is well settled that a contract relating to the sale of real estate must be signed by both parties, the buyer and seller, and if signed only by the buyer, the recording of such will not be constructive notice to a subsequent purchaser from said owner without actual notice. Heintz v. Moore, 246 Mo. 226.

The failure of both parties to sign and acknowledge the purported agreement for extension of city loan, is open to the same objection that could be made to a deed which was not properly acknowledged.

#3 - Honorable Oliver Senti

In Williams v. Butterfield (1904),
182 Mo., 1.c. 185, the court said:

"The record of this deed, as offered in evidence, does not show any certificate of acknowledgment by Henry Bohlcke, the grantor in said deed. Under the statute, it must be conceded that this deed was not entitled to be recorded, by reason of the absence of such acknowledgment.

"It follows from this, if the general rule is applicable to this deed, that in the absence of the certificate of acknowledgment required by the statute, it had no place upon the land records of Stoddard county, and if improperly recorded, would not impart constructive notice to a subsequent purchaser in good faith, for a valuable consideration."

It is, therefore, the opinion of this office that the purported "agreement for extension of city loan", executed and acknowledged only by the debtor is not entitled to be recorded in this state.

Yours very truly,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General