

RECORDER OF DEEDS:
REAL ESTATE:

The term "any instrument conveying real property or any interest therein" as used in Senate Bill No. 22, 75th General Assembly, refers to any instrument or document that passes from one party to another any legal or equitable interest in real property, whether such instrument or document be a Deed, Will or other instrument, and that such language is broad enough to cover those forms and orders of the Probate Court such as Orders of Distribution and Orders Approving Wills and Orders of the Circuit Court which do in fact convey or pass any interest in real estate.

OPINION NO. 226

July 1, 1970

Honorable David H. Jackson
Prosecuting Attorney
St. Clair County Courthouse
Osceola, Missouri 64776



Dear Mr. Jackson:

This is in response to your request for an opinion on the following question:

Section 17, Act 191, of the Seventy-fifth General Assembly refers to a "one dollar fee being charged by all recorders for the recording of any instrument conveying real property or any interest therein." To what does the term "any instrument conveying real property or any interest therein" refer?

You refer to Section 17 of Senate Bill No. 22 of the 75th General Assembly. The second paragraph of such section now appears as Section 59.319, V.A.M.S. Such section provides as follows:

"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."

Honorable David H. Jackson

It would be an impossible task to list all instruments that could conceivably convey an interest in real property. Therefore, your question can only be answered in a general manner, with each case having to be decided upon its own facts in determining whether or not a particular instrument conveys an interest in real property.

In State v. Sutterfield, 176 S.W.2d 666,669 (St.L.Mo.App. 1944) the court stated:

"There is no magical meaning in the word 'conveyance'; it denotes an instrument which carries from one person to another an interest in land. If it does not do this it is not a conveyance."

The word "interest" as it refers to real estate is broader than the word "title", and literally includes every kind of claim to land which can form the basis of a property right. Ornatowski v. National Liberty Insurance Company of America, 290 Mich.241, 287 N.W.449,451. "Interest" as applied to property includes every quantity of ownership that a person may have from absolute ownership down to bare possession. Providence Washington Insurance Company v. Pass, 64 Georgia App.221, 12 S.E.2d 460,461. Again, as defined in Fletcher v. Winnfield, 160 La.261, 107 So.103, "interest" means a right in property, or some of the uses or benefits from which property is inseparable. While, of course, there are some claims against property that are not "interests in real property", the list of possible claims on real property that do constitute an "interest" in real property is almost endless.

The only way this definition can be narrowed is to determine whether or not a particular document, with a particular set of facts, conveys an "interest" in real property. Since those specific facts are not presented in this opinion, the question as to what particular documents represent a conveyance of an interest in real property cannot be decided here.

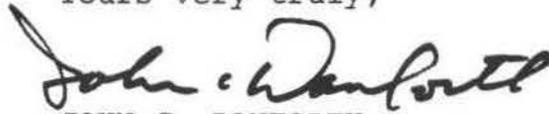
CONCLUSION

Therefore, it is the opinion of this office that the term "any instrument conveying real property or any interest therein" as used in Senate Bill No. 22, 75th General Assembly, refers to any instrument or document that passes from one party to another any legal or equitable interest in real property, whether such instrument or document be a Deed, Will or other instrument, and that such language is broad enough to cover those forms and orders of the Probate Court such as Orders of Distribution and Orders Approving Wills and Orders of the Circuit Court which do in fact convey or pass any interest in real estate.

Honorable David H. Jackson

The foregoing opinion, which I hereby approve, was prepared by my assistant, Thomas L. Patten.

Yours very truly,

A handwritten signature in cursive script that reads "John C. Danforth". The signature is written in black ink and is positioned above the typed name.

JOHN C. DANFORTH
Attorney General