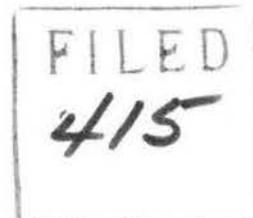


RECORDER OF DEEDS: Instruments subject to the one dollar user  
REAL PROPERTY: fee provided by Section 59.319, RSMo 1969,  
FEES: include warranty deeds, quit claim deeds,  
trustee's deeds, collector's deeds, execu-  
tor's deeds, administrator's deeds, guardian's deeds, sheriff's deeds  
in partition, highway deeds, cemetery deeds, tax deeds, wills which  
devise real property, leases of real property, all instruments which  
convey easements, patents of land, probate and circuit court decrees  
which convey real property interest, and all distributions of the  
probate court involving real property. Instruments which do not con-  
vey an interest in real property and are not subject to the user fee  
include deeds of trust, deeds of release (full and partial), uniform  
commercial code security instruments involving fixtures and crops, in-  
struments which release uniform commercial code security interests,  
probate and circuit court decrees which do not convey real property  
interests, distribution orders which do not involve real property,  
leases on personal property, affidavits, surveys, plats (where ease-  
ments are not established), patents on inventions, death certificates,  
marriage licenses, powers of attorney, articles of incorporation, ar-  
ticles of dissolution, resolutions and statements.

September 28, 1970

OPINION NO. 415

Honorable Haskell Holman  
State Auditor  
State Capitol Building  
Jefferson City, Missouri 65101



Dear Mr. Holman:

This is in reply to your request for an official opinion from this office concerning the following question as it appears in your letter:

"What specific instruments constitute 'any instrument conveying real property or any interest therein' for which recorders shall charge and collect the one dollar fee?"

Section 59.319, RSMo 1969, 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

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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."

As a practical matter, this opinion is limited to a discussion of those instruments which are normally and regularly recorded in a recorder's office.

The wording of Section 59.319 limits the one dollar user fee to instruments " . . . conveying real property or any interest therein."

The word "conveyance" is a flexible term, the meaning of which is to be determined according to the manner in which it is used. Bates v. State Savings Bank, 136 Kan.767, 18 P.2d 143 (1933). An instrument qualifies as a conveyance when it carries from one person to another an interest in land. State v. Sutterfield, 176 S.W.2d 666 (St.L.Ct.App.1944).

The word "interest" as used in a recording statute, when referring to an interest in land, is the broadest term applicable to claims in or upon real property, and is broad enough to include every right, title or interest in realty. Pennsylvania Range Boiler Co. v. City of Philadelphia, 344 Pa.34, 23 A.2d 723 (1942).

The most obvious example of an instrument which conveys an interest in real property is a deed. A "deed" is by definition a written instrument whereby an interest in real property is conveyed or transferred from a grantor to a grantee. New Home Building Supply Company v. Nations, 259 N.C.681, 131 S.E.2d 425 (1963). It is clear that every kind of deed which conveys a present interest in land, whether that interest be a fee simple, life estate, easement, or whatever, does "convey an interest in real property" and is subject to the one dollar user fee provided by Section 59.319. The kinds of deeds which qualify include a warranty deed, quit claim deed, executor's deed, administrator's deed, tax deed, sheriff's deed in partition, highway deed, cemetery deed, and perhaps others.

A lease is a conveyance of an estate in realty which divests the owner of a certain estate for a given time. Mattingly's Executor, et al., v. Brents, 159 S.W.1157 (Ky App.1913). To "lease" is to transfer (or convey) property for a certain specified term, from the lessor to the lessee. Moorshead v. United Railways Company, 96 S.W.261 (St.L.Ct.App.1906). By its very definition, a lease of real estate involves the conveyance of a real property interest and as such, clearly comes within the scope of Section 59.319.

The user fee is to be charged in connection with recording of a will where an interest in real property is involved. It is our view

that a will does in fact convey a real property interest when it contains a devise of land. Shaw v. Wertz, 369 S.W.2d 215 (Mo.1963).

An easement is an interest in real property which involves the title to the land. Allen v. Smith, 375 S.W.2d 874 (Mo.1964). Thus, whenever an instrument establishes an easement, such instrument is subject to the one dollar user fee since it thereby conveys an interest in real property. Normally, a "plat" will not involve the conveyance of a real property interest. However, if a plat contains roadway or other types of easements, it is subject to the fee.

A "land patent" is an instrument by which the government, whether state or national, passes its title. Since land patents convey real property interests, it is clear that they are subject to the user fee.

It should be noted that the language of Section 59.319 is broad enough to cover all forms and orders of the probate court, such as orders of distribution, and orders approving wills, as well as orders of the circuit court which do in fact convey or transfer any legal interest in real estate. Also, all court decrees, such as quiet title decrees, which convey an interest in real property, are subject to the fee.

There are several instruments recorded in the various recorder of deeds offices which obviously do not convey an interest in real property and, therefore, are not within the scope of Section 59.319. Those instruments include affidavits, surveys, patents on inventions, plats (which do not establish easements), death certificates, marriage licenses, powers of attorney, certificates of incorporation, articles of dissolution, resolutions, statements, and court decrees or orders which do not involve a conveyance of real estate.

In Missouri, a security interest in land is obtained by the use of a deed of trust rather than by the use of a common law mortgage. On its face, a deed of trust appears to transfer title to the real estate from the mortgagor to the trustee. However, the courts in this state have held that the trustee under a deed of trust does not receive legal title at the time the trust deed is executed. Lustenberger v. Hutchison, 119 S.W.2d 921 (Mo.1938). In this state, a "mortgage" or "deed of trust" is a mere security for the payment of a debt and is not an outright conveyance of title to realty. In re Title Guaranty Trust Company, 113 S.W.2d 1053 (Mo.1938). In the case of Missouri Real Estate and Loan Company v. Gibson, 220 S.W.675 (Mo. 1920), the Missouri Supreme Court said:

" \* \* \* Notwithstanding a few attributes that still inhere in it as a result of its common-law origin, a mortgage, or deed of trust in the nature of a mortgage, given on land to secure the payment of a debt, is now regarded in this state as being, in its last analysis, a lien and nothing more. Dickerson v. Bridges, 147 Mo.235,244, 48 S.W.825; Terminal Ice & Power Co. v. Ins. Co., 196 Mo.App.241,248,

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194 S.W.722. So viewed, it is neither an estate in land, nor a right to any beneficial interest therein. It is neither jus in re nor jus ad rem. It is merely the right to have the debt, if not otherwise paid, satisfied out of the land. \* \* \* "  
(Id. at 676).

Thus in this state, a deed of trust conveys merely a lien and nothing more. This raises the question whether a "lien" on real property amounts to an "interest" therein.

In Koenig v. Leppert-Roos Fur Company, 260 S.W.756 (Mo.1924), the St. Louis Court of Appeals stated:

" \* \* \* A lien is not a property in or right to the thing itself, but constitutes a charge or security thereon. 25 Cyc.660." (Id. at 758).

In Wakefield v. Dinger, 135 S.W.2d 17 (Mo.1939), the court said that a mortgage or deed of trust is nothing more than chattel interest. Since the trustee under a deed of trust holds only a lien on the land and since that lien does not amount to an interest in real property in Missouri, it is the opinion of this office that a deed of trust does not convey any "interest in real property" and as such is not subject to the user fee provided by Section 59.319.

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.

As stated above, in Missouri a security interest on real property is merely a lien and as such does not amount to an interest in real property. Missouri Real Estate and Loan Company v. Gibson, supra; Koenig v. Leppert-Roos Fur Company, supra. Since a security interest on real property itself does not rise to the level of an "interest in real property," it follows that a security interest in fixtures or crops does not amount to an interest in the real property to which the fixtures are attached or upon which the crops are growing. As a result, those instruments relating to security interest in fixtures or crops, which are required under Section 400.9-401, RSMo 1969, to be recorded with the recorder of deeds located in the county where the mortgage (deed of trust) on the real estate would be located, are not instruments which convey an interest in real property. In like manner, the release of such instruments may be recorded without payment of the fee.

#### CONCLUSION

Therefore, it is the opinion of this office that instruments subject to the one dollar user fee provided by Section 59.319, RSMo

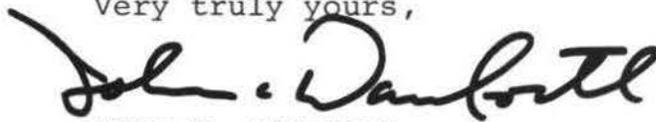
Honorable Haskell Holman

1969, include warranty deeds, quit claim deeds, trustee's deeds, collector's deeds, executor's deeds, administrator's deeds, guardian's deeds, sheriff's deeds in partition, highway deeds, cemetery deeds, tax deeds, wills which devise real property, leases of real property, all instruments which convey easements, patents of land, probate and circuit court decrees which convey real property interest, and all distributions of the probate court involving real property.

Instruments which do not convey an interest in real property and are not subject to the user fee include deeds of trust, deeds of release (full and partial), uniform commercial code security instruments involving fixtures and crops, instruments which release uniform commercial code security interests, probate and circuit court decrees which do not convey real property interests, distribution orders which do not involve real property, leases on personal property, affidavits, surveys, plats (where easements are not established), patents on inventions, death certificates, marriage licenses, powers of attorney, articles of incorporation, articles of dissolution, resolutions and statements.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John E. Park.

Very truly yours,

A handwritten signature in black ink, reading "John C. Danforth". The signature is written in a cursive style with a large, sweeping initial "J".

JOHN C. DANFORTH  
Attorney General