

RECORDERS:
DEEDS OF TRUST:

or release can be executed only
Chapter 443, RSMo, and recorded
tion 109.120, RSMo.

When mortgages or deeds of trust
have been recorded on microfilm,
the acknowledgment of satisfaction

by written release as required by
on microfilm as provided in Sec-

OPINION NO. 262

September 4, 1973

Honorable Robert O. Snyder
Representative, District 45
Mississippi Valley Building
506 Olive Street
St. Louis, Missouri 63101



Dear Representative Snyder:

This is in response to your request for an opinion from this
office as follows:

"See attached Section 443.060 V.A.M.S. Note
the disjunctive word 'or' in Subsection 1 in
the statute, indicating that satisfaction of
a note secured by a deed of trust on real
estate may be satisfied in either manner pre-
scribed by the statute.

"See attached Section 109.120 V.A.M.S. Under
the terms of Subsection 3 of this statute, Re-
corders of Deeds in many counties of Missouri
which have adopted microfilm recording of in-
struments affecting title to real estate have
required the release of notes secured by deeds
of trust by deed of release rather than by re-
recording the original note and deed of trust
with appropriate acknowledgments of payment,
satisfaction or release on the margin or else-
where. The former opinions of your office re-
ferred to in the annotations do not appear to
cover this question. . . .

"Please advise whether a Recorder of Deeds in
a county which has adopted microfilm records
as a means of recording instruments affecting
real estate can require the record of payment,

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satisfaction or release, as the case may be, to be made by a deed of release or similar instrument or may such payment, satisfaction or release be reflected by appropriate notations on the original note and deed of trust.

"An attorney at law residing in the district represented by the undersigned was advised by an out-state Recorder of Deeds that under the terms of Section 109.120, as construed with Section 443.060, a deed of release could be required in order to effectively satisfy of record a paid note secured by a deed of trust."

Section 443.060, RSMo, to which you refer, provides the method for acknowledgment of satisfaction and release of mortgages and deeds of trust. It provides in part as follows:

"1. If any mortgagee, cestui que trust or assignee, or administrator of the mortgagee, cestui que trust or assignee, receive full satisfaction of any mortgage or deed of trust, he shall, at the request and cost of the person making the same, acknowledge satisfaction of the mortgage or deed of trust on the margin of the record thereof, or deliver to such person a sufficient deed of release of the mortgage or deed of trust; but it shall not in any case be necessary for the trustee to join in such acknowledgment of satisfaction or in such deed of release; and provided further, that when any mortgage or deed of trust shall be satisfied by a deed of release, the recorder shall note on the margin of the record of such deed of trust the book and page where such deed of release is recorded. In case satisfaction be acknowledged by the payee or assignee, or in case a full deed of release is offered for record, the note or notes secured shall be produced and canceled in the presence of the recorder, who shall enter that fact on the margin of the record and attest the same with his official signature; and no full deed of release shall be admitted to record unless the note or notes are so produced and canceled, and that fact entered on the margin of the record and attested as above provided."

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Under the above section if any mortgagee or his representative receive full satisfaction of the mortgage or deed of trust, he shall, at the request and cost of the person making the same, acknowledge satisfaction of the mortgage or deed of trust on the margin of the record thereof, or deliver to the person making the same a sufficient deed of release of the mortgage or deed of trust. Under this section, the payee or assignee may acknowledge satisfaction on the margin of the record, or deliver to the person making the same a deed of release.

Section 109.120, RSMo, provides as follows:

"3. When any recorder of deeds in this state is required or authorized by law to record, copy, file, recopy, replace or index any document, plat, map or written instrument, he may do so by photostatic, photographic, microphotographic, microfilm, or similar mechanical process which produces a clear, accurate and permanent copy of the original. The reproductions so made may be used as permanent record of the original. When microfilm or a similar reproduction is used as a permanent record by recorder of deeds, duplicate reproductions of all recorded documents, indexes and files required by law to be kept by him shall be made and one copy of each document shall be stored in a fireproof vault and the other copy shall be readily available in his office together with suitable equipment for viewing the filmed record by projection to a size not smaller than the original and for reproducing copies of the recorded or filmed documents for any person entitled thereto. In all cases where instruments are recorded under the provisions of this section by microfilm, any release, assignment or other instrument, affecting a previously recorded instrument by microfilm may not be made by marginal entry but shall be filed and recorded as a separate instrument and shall be in a separate book, cross-indexed to the document which it affects." (emphasis added)

You inquire whether a recorder of deeds in a county which has adopted microfilm records as a means of recording instruments affecting real estate can require the record of payment, satisfaction or release, as the case may be, to be made by deed of release or similar instrument or may such payment, satisfaction or release be reflected by appropriate notations on the original note and deed of trust.

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We assume, as a matter of fact, it is impossible for acknowledgment of satisfaction as required under Section 443.060, supra, to be made on the margin of the record when the instrument has been recorded on microfilm.

Under Section 109.120, supra, the recorder of deeds is authorized by law to record any document, plat, map or written instruments by photostatic, photographic, microphotographic, microfilm or similar mechanical process which reduces a clear, accurate and permanent copy of the original. It further provides that in all cases where instruments are recorded under the provisions of this section by microfilm, any release, assignment or other instrument affecting a previously recorded instrument by microfilm may not be made by marginal entry but shall be filed and recorded as a separate instrument and shall be in a separate book, cross-indexed to the document to which it refers.

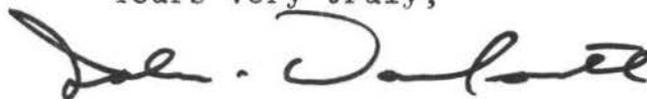
It is our opinion that acknowledgment of satisfaction or release or partial release of a mortgage or deed of trust which has been recorded on microfilm has to be by a release in writing as required by Chapter 443, RSMo, governing the execution and releases of mortgages or deeds of trust, and the release must be recorded on microfilm as provided for under Section 109.120, supra. It is our opinion that appropriate notations on the original note or deed of trust showing satisfaction and release does not constitute a release under Section 109.120 and recording on microfilm the promissory note marked paid and the mortgage or deed of trust marked satisfied does not satisfy of record the mortgage or deed of trust.

CONCLUSION

It is the opinion of this office that when mortgages or deeds of trust have been recorded on microfilm, the acknowledgment of satisfaction or release can be executed only by written release as required by Chapter 443, RSMo, and recorded on microfilm as provided in Section 109.120, RSMo.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,



JOHN C. DANFORTH
Attorney General