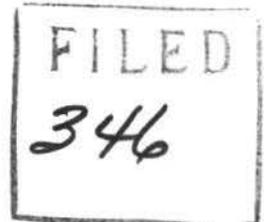


MORTGAGES: When a deed of trust or mortgage is filed  
DEED OF TRUST: for record in a second class county to  
RECORDER OF DEEDS: secure the payment of a guaranty in writ-  
ing as described herein such guaranty shall  
be presented to the recorder of deeds who shall stamp or write upon  
such written guaranty an identification thereof as being instruments  
described in such mortgage or deed of trust, and in certifying the  
releases, the recorder shall certify that such identified instru-  
ments were produced and canceled.

OPINION NO. 346

November 13, 1974

Honorable Charles LeCompte  
Prosecuting Attorney  
Greene County Courthouse  
940 Boonville Avenue  
Springfield, Missouri 65802



Dear Mr. LeCompte:

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

"Under the optional 'identification' provisions of V.A.M.S. 443.040 and the mandatory 'identification' provisions of V.A.M.S. 443.050 is a Recorder of Deeds obliged to identify a guaranty as the instrument secured by a deed of trust in the case of a deed of trust designed and drafted to secure a guaranty such as the deed of trust and guaranty forms attached as exhibited and what means should be used to satisfy the note production and cancellation provisions of V.A.M.S. 443.060.

"A lender has submitted a deed of trust to secure guaranty to the Greene County Recorder of Deeds for recordation and tendered the guaranty for identification. The lender respectfully insists that the guaranty be identified and the Recorder of Deeds has declined to do so upon his construction of the law and the confirming opinion of this office. The lender advises that it has

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caused such guaranties to be identified in many Missouri counties and has procured full title insurance as to many of those transaction."

You refer specifically to Sections 443.040, 443.050, and 443.060.

Greene County is a second class county and the provisions of Section 443.050, RSMo, apply.

Section 443.050, RSMo, provides in part as follows:

"1. In all cities in this state which now have or may hereafter have six hundred thousand inhabitants or more, and in all counties of class one and two, when any mortgage or deed of trust or other instrument intended to create a lien upon real estate to secure the payment of a debt or obligation evidenced by an instrument or instruments in writing, shall be filed for record, the instrument or instruments representing the principal of such debt or obligation or any part thereof shall be presented to the recorder of deeds at the time of such filing for record, or in case the mortgage or deed of trust or other instrument is to be filed in more than one county, then to the recorder of the county where first filed, and the recorder shall, for the compensation of twenty-five cents for each of the first four of such instruments identified by him and ten cents for each additional instrument identified by him, stamp or write upon each such instrument evidencing principal so secured an identification thereof as being a note, bond or other evidence of debt described by such mortgage, deed or trust or other instrument of security.

"2. The identification may be in the following form:

This note described in instrument bearing serial number .... filed for record this .... day of ....., 19..., was

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presented to me and is identified as one of the instruments described in and secured by said deed of trust.

"3. In certifying to releases where the secured instruments have been so identified, the recorder shall certify that such identified instruments were produced and canceled." (Emphasis supplied)

You submit a copy of what is referred to as guaranty which you state was presented to the recorder of deeds of Greene County for identification together with the mortgage or deed of trust as security for the same. The guaranty to which you refer provides in part as follows:

"The undersigned hereby requests Bank to give, and continue to give, \_\_\_\_\_

(herein called 'Debtor') from time as Bank may see fit, financial accommodations and credit and, in consideration thereof, whether the same has been heretofore given or may hereafter be given by Bank to Debtor, the undersigned hereby guarantees and promises and agrees to make prompt payment to Bank, as they severally mature, of all overdrafts of Debtor, of all loans made or which may be made by Bank to Debtor, of all moneys paid by Bank for the use or account of Debtor and of all notes, acceptances and other paper which have been or may be discounted for, or at the request of, Debtor, whether made, drawn, accepted, endorsed or not endorsed by Debtor, and whether endorsed with or without recourse, and of any and all other obligations, of every kind and character, now due or which may hereafter become due from Debtor to Bank, howsoever created, arising or evidenced, and also of any and all renewals or extensions of any of the foregoing (all herein called 'Liabilities') regardless of any collateral now held by Bank, or which Bank may hereafter acquire, as security to any or all of the Liabilities of Debtor."

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You further state that it is secured by a deed of trust of even date covering certain real estate in Greene County, Missouri.

Under Section 443.050, in counties of class one and two on any mortgage or deed of trust or other instrument intended to create a lien upon real estate to secure the payment of a debt or obligation evidenced by an instrument or instruments in writing is filed for record, instrument or instruments representing the principal of such debt or obligation shall be presented to the recorder of deeds and the recorder shall stamp or write upon each such instrument evidencing principal so secured and identification thereof as being a note, bond, or other evidence of debt described by such mortgage or deed of trust. This statute further provides that in certifying to releases where the secured instruments have been so identified, the recorder shall certify that such identified instruments were produced and canceled.

In Webster's Seventh New Collegiate Dictionary, 1967, obligation is defined as follows:

"1: an act of obligating oneself to a course of action 2a (1): an obligating factor that binds one to a course of action (2): the power in such a factor b: a bond with a condition annexed and a penalty for nonfulfillment; broadly: a formal and binding agreement or acknowledgment of a liability c: an investment security 3: something that one is bound to do: DUTY 4: INDEBTEDNESS 5: money committed to a particular purpose: LIABILITY"

In Commerce Trust Company v. Howard, 429 S.W.2d 702 (Mo. 1968), the judgment against a defendant on a guaranty who had executed a guaranty identical to the one under consideration was upheld by the court.

It is our opinion that the guaranty described in this opinion request comes within the provisions of Section 443.050 as an instrument or instruments representing the principal of such debt or obligation described in the deed of trust which are required to be presented to the recorder for identification and it is the recorder's duty to so identify the instruments.

#### CONCLUSION

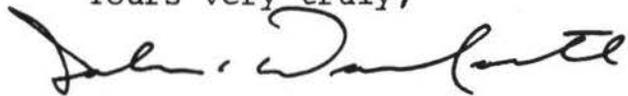
It is the opinion of this office that when a deed of trust or mortgage is filed for record in a second class county to secure

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the payment of a guaranty in writing as described herein such guaranty shall be presented to the recorder of deeds who shall stamp or write upon such written guaranty an identification thereof as being instruments described in such mortgage or deed of trust, and in certifying the releases, the recorder shall certify that such identified instruments were produced and canceled.

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

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH  
Attorney General