

OLD AGE ASSISTANCE:

Proposed escrow agreement in connection with the Old Age Assistance Commission of Iowa must be acknowledged, real estate described, same must be recorded with the Recorder of Deeds, Recorder of deeds to receive regular statutory fee, and all executed according to the laws of the State of Missouri.

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February 4, 1936



Honorable H. H. Bittinger, Manager  
Property and Insurance Department  
Old Age Assistance Commission  
Des Moines, Iowa

Dear Sir:

This department is in receipt of your letter of January 29, inclosing a copy of an escrow agreement in connection with the Old Age Assistance Commission of the State of Iowa, also a copy of the Act. Your letter is as follows:

"The Old Age Assistance Commission of the State of Iowa grants assistance to residents of the State of Iowa under certain conditions prescribed by statute, and in cases of those persons having real estate it is a condition to the grant of assistance to them that they agree that a lien be created on such real property as they may own in the State of Iowa or elsewhere. Under the Iowa law it has been ruled that the description of the property need not be inserted in the body of the lien before the same is filed for record in the office of the recorder of the county, or counties, wherein the grantee of assistance may own real estate.

"While the filing of the type of the lien above described is considered sufficient in the State of Iowa it has been determined by

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the members of the Old Age Assistance Commission that in order to avert possible litigation, or controversy in the courts of other states, a deed should be executed and delivered to an escrow agent to be held according to the conditions expressed in a form of agreement which has been written and a copy of which is enclosed herewith for your inspection.

"It is the desire of the commission that this agreement to be executed by and between the recipients of assistance and the commission be eligible for record and sufficient to give notice of a lien against the property which may be owned in your state by recipients of assistance residing in the State of Iowa.

"The members of the Old Age Assistance Commission will be greatly pleased if you will give your opinion as to whether or not this agreement will be handled by your county officers, and if so, the name of the record in which it should be placed; and also, whether it should be recorded or simply filed in order to give adequate notice to protect us from endangering our position by reason of other liens, with the exception of taxes.

"You will find enclosed herewith a copy of the old age assistance act as amended and revised which you may retain for your files.

"Thanking you in advance for your kind cooperation in this matter, we are."

We have searched our Missouri Statutes diligently in an effort to find some form of lien which might correspond

to the escrow agreement. We frankly confess that we have nothing in our statutes similar to the instrument.

Section 11543, Revised Statutes Missouri 1929, enumerates the instruments which shall be recorded and is as follows:

"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; second, all papers and documents found in their respective offices, of and concerning lands and tenements, or goods and chattels, and which were received from the Spanish and French authorities at the change of government; third, all marriage contracts and certificates of marriage; fourth, all commissions and official bonds required by law to be recorded in their offices; fifth, all written statements furnished to him for record, showing the sex and date of birth of any child or children, the name, business and residence of the father, and maiden name of the mother of such child or children."

The question arises as to whether or not the form of agreement which you present is of such nature, and granting that it is in proper form, can the same be admitted to the records of our state.

Section 3039 relates to deeds and contains the clause "or whereby any real estate may be affected," and is as follows:

"Every instrument in writing that conveys any real estate, or whereby any real estate may be affected, in law or equity, proved or acknowledged and certified in the manner hereinbefore

prescribed, shall be recorded in the office of the recorder of the county in which such real estate is situated."

Under the two sections quoted above it is possible that the escrow agreement can be recorded in our state. As stated in the beginning, our statutes do not contain any provision for creating a lien by filing, but in the event the instrument is recorded it imparts notice, as stated in Section 3040, Revised Statutes Missouri 1929, which is as follows:

"Every such instrument in writing, certified and recorded in the manner hereinbefore prescribed, shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof and all subsequent purchasers and mortgagees shall be deemed, in law and equity, to purchase with notice."

We note the simple form of acknowledgment at the close of the agreement, and, in our opinion, the same does not conform with the acknowledgments required as contained in Section 3029, Revised Statutes Missouri, 1929, which is as follows:

"The certificate of acknowledgment shall state the act of acknowledgment, and that the person making the same was personally known to at least one judge of the court, or to the officer granting the certificate, to be the person whose name is subscribed to the instrument as a party thereto, or was proved to be such by at least two witnesses, whose names and places of residence shall be inserted in the certificate; and the following forms of acknowledgment may be used in the case of conveyances or other written instruments affecting real estate; and any acknowledgment so taken and certified shall be sufficient

to satisfy all requirements of law relating to the execution or recording of such instruments:

"(Begin in all cases by a caption, specifying the state and place where the acknowledgment is taken)

"1. In case of natural persons acting in their own right:

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared A B (or A B and C D), to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed.

"2. In the case of natural persons acting by attorney:

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared A B, to me known to be the person who executed the foregoing instrument in behalf of C D, and acknowledged that he executed the same as the free act and deed of C D.

"3. In the case of corporations or joint stock associations:

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me appeared A B to me personally known, who, being by me duly sworn (or affirmed) did say that he is the president (or other officer or agent of the corporation or association), of (describing the corporation or association), and that the seal affixed to foregoing instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees), and said A B acknowledged said instrument to be the free act and deed of said corporation (or association).

"(In case the corporation or association has no corporate seal, omit the words 'the seal affixed to said instrument is the corporate seal of said corporation (or association), and that,' and add at the end of the affidavit clause the words 'and that said corporation (or association) has no corporate seal.')

"(In all cases add signature and title of the officer taking the acknowledgment.)

"When a married woman unites with her husband in the execution of any such instrument, and acknowledges the same in one of the forms above sanctioned, she shall be described in the acknowledgment as his wife, but in all other respects her acknowledgment shall be taken and certified as if she were sole; and no separate examination of a married woman in respect to the execution of any release or dower, or other instrument affecting real estate, shall be required."

In the case of Williams v. Butterfield 182 Mo. 181, the Court held that a deed or other instrument not properly acknowledged should not be recorded. Therefore, we consider your form of acknowledgment to be totally invalid.

We note that the Act states it is not necessary to contain the description of the real estate affected, neither does your form of escrow agreement contain any description of the land.

We think it is necessary that the real estate concerning which the agreement is to affect should be described.

In the case of *Martin v. Kitchen* 195 Mo. 477, the Court said:

"A trust deed of the N. W.  $\frac{1}{4}$  of Section 7, North of Castor River, in a certain county, omitting all reference to township or range, is too indefinite to pass title, especially where it appears that the N.W.  $\frac{1}{4}$  of Section 7 lies North of Castor River in other townships in the county."

And also in the case of *Implement Company v. Rogers* 229 S. W. 779,

"A trust deed, describing land as being in 'township thirty (31),' is ineffectual to convey a tract in 'township thirty-one (31)'."

We note that under the terms of your Act the county recorder, which corresponds in our state to the recorder of deeds, is not entitled to any fee for such recording and indexing. We do not believe that the recorders of deeds in the various counties of the State of Missouri would be bound by that provisions of the statute and would be entitled to receive their regular recording fees.

Lastly, we think that the proposed escrow agreement would have to conform to all of the laws of the State of Missouri with respect to form and the recording of the same. The power and authority of the Legislature of the State of Iowa to pass laws which would in anywise affect the title of real estate in Missouri, can be questioned, as was said in the case of *Buckner v. Finley*, 7 L. ed. 528:

"For all national purposes embraced by the federal constitution, the states and the citizens thereof are one, united under the same sovereign authority, and governed by the same laws. In all other respects,

the states are necessarily foreign to, and independent of, each other."

And also in the case of Hanley v. Donoghue 116 U. S. 1. c. 4:

"All comity between states and citizens of different States, so far as rights, privileges and immunities are not guaranteed by the Constitution of the United States, rests on the principle that it cannot be extended, in violation of the laws and policy of the State. The extension of comity in violation of the law and policy of the State would have been an abdication of the law and sovereignty of the State, and a recognition of the superiority, not the equality, of the foreign State. Every State judged for itself, of the nature, extent, and utility of the recognition of foreign laws, respecting the state and condition of persons, and was not bound to recognize them when prejudicial to their own interests."

#### CONCLUSION

We are of the opinion that if the proposed escrow agreement is prepared and acknowledged in accordance with the laws of the State of Missouri, the same may be recorded by the officers in the State of Missouri known as recorders of deeds, the book being known as the Deed Records; that it will be necessary to record the instrument in order for the same to constitute legal notice.

In the event that the pensioner executes the deed mentioned in the agreement it is necessary that the same

Honorable H. H. Bittinger

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be executed in form and in the manner as prescribed by  
the Statutes of the State of Missouri.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
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