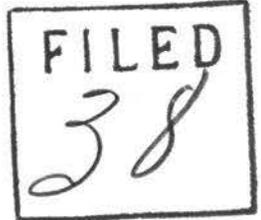


CONVEYANCE: Maker of a note secured by a deed of trust cannot release record after payment of such note.

May 10, 1944



Mr. Joseph Hayes  
Recorder of Deeds  
Butler County  
Poplar Bluff, Mo.

Dear Mr. Hayes:

This is an acknowledgment of your inquiry addressed to the General on May 5, 1944, which is as follows:

"I am writing you for information concerning the releasing of Deeds of Trust and Mortgages on Real Estate. This office has for many years followed the custom of not allowing the maker of the note or notes to make his own release, (That is he has never been permitted to sign the record as the assignee of the beneficiary or note, regardless of the proper indorsement), whether this is the proper way or not, that is what we would like to know.

"Would it be correct for the maker of the note, after the note has been properly indorsed by the Beneficiary, to sign the marginal release, as Assignee of the Beneficiary?

"What we specifically want to know is, can the maker of the note make his own release.?"

Section 3465, R. S. Mo., 1939, is in part as follows:

"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.\* \* \*"

Section 3472 thereof is as follows:

"If any such person, thus receiving satisfaction, do not, within thirty days after request and tender of costs, acknowledge satisfaction on the margin of the record, or deliver to the person making satisfaction a sufficient deed of release, he shall forfeit to the party aggrieved ten per cent upon the amount of the mortgage or deed of trust money, absolutely, and any other damages he may be able to prove he has sustained, to be recovered in any court of competent jurisdiction."

The above sections indicate that any party legally holding a note secured by a deed of trust and who is legally entitled to receive the money due under such contract must, upon receiving satisfaction, acknowledge satisfaction on the margin of the record.

In passing on this question the Kansas City Court of Appeals, 181 Mo. App. 381, 385-6, said:

"The coupon notes were negotiable, and, when detached from the bond or note to which they pertained, they possessed all the attributes

of commercial paper. (8Am. & Eng. Ency. of Law (2nd Ed.), 6. Edwards v. Bates County, 163 U. S. 269, 1. c. 271.) And when negotiated they carried with them the security given by the deed of trust pro tanto. (8 Am. & Eng. Ency. of Law (2nd Ed.), 13.)

"The assignee of a note secured by a deed of trust is the party entitled to receive payment and who is thereupon bound to satisfy the record as to that note. (Sec. 2844, R. S. Mo. 1909; Ewing v. Shelton, 34 Mo. 518.) This applied as well to the assignee of a part of the notes secured as it does to the assignee of all. (Hill v. Wainwright, 83 Mo. App. 460.) Hence, after the coupons in this case were assigned to Boggs, he was the proper person to release as to them."

The payment of the debts secured by mortgages constitute satisfaction of such mortgages. In this connection the court in the case of McNair v. Picotte, 33 Mo. Reports 57, 71, held:

"Assuming, but not deciding, that the sheriff's sale to Duchouquette was void, the payment by Delassus of the debts secured by the mortgages was a satisfaction of the mortgages. The failure to enter satisfaction on the margin of the record of the mortgages might subject the mortgagees to penalties, but has no effect to keep the mortgages in existence. It was only a failure to supply convenient evidence of a fact accomplished.

"After the satisfaction of the mortgages, whatever right Delassus had was legal, not equitable, and this suit which prays only equitable relief, was properly decided against the plaintiffs, the representatives of Delassus.\* \* \*"

Mr. Joseph Hayes

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CONCLUSION

Therefore, the assignee of a note or notes secured by a deed of trust, after payment to him of the full amount of such indebtedness, is the proper party to satisfy the record as to such note or notes. However, where there is a purported assignment of a note, after payment, to the maker thereof, such maker as assignee may not be permitted to satisfy the record.

Respectfully submitted,

SVM:EH

S. V. MEDLING  
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APPROVED:

ROY MCKITTRICK  
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