



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

November 20, 1975

ATTORNEY GENERAL OPINION NO. 75- 440

Mr. Lyndus A. Henry
County Counselor
Office of the Board of County Commissioners
Box 31-A
Olathe, Kansas 66061

RE: Taxation - Mortgage Registration

Synopsis: Mortgage Registration fees may be collected but once on a single indebtedness. The Register of Deeds must require the statutory affidavit to be filed, and has the right to inspect such additional instruments as may be necessary to establish to his or her satisfaction the full amount of consideration secured by a mortgage in order to assess the proper fee. Such additional instruments need not be filed or recorded.

* * *

Dear Lyndus:

In answer to your letter of September 12, 1975, we see no conflict between Opinion No. 75-264 and our letter of February 13, 1975. While a Register of Deeds cannot compel the filing and recording of additional instruments to support the amount on which a mortgage registration fee shall be assessed, she does have the right to inspect such instruments as she deems necessary for her to comply with K.S.A. 79-3104 in filling out the form required to be endorsed on the mortgage instrument containing the "Amount of Indebtedness" and then assessing the fee.

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If there is no objection, the Register of Deeds keeps such copies of other supporting instruments in a separate file along with the affidavits, but there is no necessity to record them.

You inquire whether it is necessary for the mortgagor under K.S.A. 1974 Supp. 79-3102(3) to be the same legal entity, or if not, that there appear of record some document evidencing a continuity of existence between the mortgages.

K.S.A. 1974 Supp. 79-3102 exempts from the tax any mortgage or other instrument

"(3) upon that portion of the consideration stated in the mortgage tendered for filing which is verified by affidavit to be principal indebtedness covered or included in a previously recorded mortgage or other instrument with the same lender upon which the registration fee herein provided for has been paid"
[Emphasis supplied.]

The exemption of mortgages covering an indebtedness covered in a previously recorded mortgage or other instrument with "the same lender" refers, on its face, to a mortgage offered for recordation by the lender who is the same as that in a previously recorded mortgage. This particular exemption requires that there be identity of lenders between the first and a subsequent mortgage to entitle any portion of the indebtedness covered in the second mortgage upon which the tax was paid in a prior registration to exemption.

You ask, also, if the previously recorded mortgage is marked paid and released, when a later mortgage is filed of record, does this create an ambiguity.

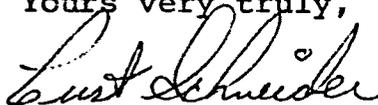
Fourth National Bank v. Hill, 181 Kan. 683, 698, 314 P.2d 312 (1957) covers this question. The Register of Deeds must be satisfied from the affidavit or other evidence that the principal indebtedness of the earlier mortgage is assumed by the mortgagor in the later mortgage. There is no ambiguity if later mortgage includes the original indebtedness.

You ask if it makes any difference if the prior mortgage is released prior to, simultaneously, or after the recording of the later mortgage.

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In our opinion, it does not matter. The sole question is whether the new mortgage includes the principal indebtedness of an earlier mortgage upon which a registration fee has been paid, and, if it does, then a second fee may not be collected on that portion of the consideration secured by the new mortgage.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:jj