



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 15, 1977

ATTORNEY GENERAL OPINION NO. 77- 199

Mr. Dennis A. Dietz
Washington County Attorney
Washington County Courthouse
Washington, Kansas 66968

Re: Mortgages--Form of Release--1977 Amendment

Synopsis: Prior to 1977, K.S.A. 58-2306 provided that any mortgage of real property "may" be discharged by an entry on the record thereof acknowledging the satisfaction of the mortgage signed in the presence of the Register of Deeds who shall subscribe as a witness. This law was amended by House Bill No. 2398 in the 1977 Session to provide that a mortgage "shall" be discharged by an instrument "duly acknowledged and certified as other instruments affecting real estate." The form submitted complies with this new law, except that the form provides for an acknowledgment only by a "notary public." K.S.A. 58-2211 provides that instruments affecting real estate may be acknowledged before a "Court having a seal, or some judge, justice, or clerk thereof, or some notary public, county clerk, or register of deeds, or mayor or clerk of an incorporated city."

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Dear County Attorney Dietz:

The Secretary of State has forwarded your letter submitting a mortgage satisfaction form and asking if it complies with K.S.A. 58-2306 as amended by House Bill 2398 which was signed by the Governor on May 11, 1977, and which will take effect upon publication in the statute book on or about July 1, 1977.

Mr. Dennis A. Dietz
Page Two
June 15, 1977

The amended law makes it compulsory that mortgages be assigned or discharged only by an instrument duly acknowledged and certified as other instruments affecting real estate. It also provides:

"Such instrument shall contain the name of the mortgagor and mortgagee, a legal description of the property and the volume and page in which the mortgage is recorded."

Your form contains the necessary blanks to furnish all the required information.

However, while the body of the acknowledgment contains all of the language required by K.S.A. 58-2213, provision is made only for a "notary public" to sign. Your attention is called to K.S.A. 58-2211, which lists the officials before whom an instrument affecting real estate must be acknowledged, as being:

". . . some court having a seal, or some judge, justice or clerk thereof, or some notary public, county clerk, or register of deeds, or mayor or clerk of an incorporated city."

While the form you submit would suffice for execution by notary publics, a more generalized form could be made by merely substituting for the words "Notary Public" the words "Title of Officer Taking Acknowledgment" with a blank line following.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:jj