



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 21

The Honorable Barbara P. Allen
State Representative, Twenty-First District
State Capitol, Room 426-S
Topeka, Kansas 66612

Re: Notaries Public and Commissioners--Unsworn
Declarations--Unsworn Declarations; Written
Declaration Sufficient

Synopsis: Real estate mortgages and deeds must be
acknowledged in accordance with the provisions of
K.S.A. 1990 Supp. 58-2211, and K.S.A. 1990 Supp.
53-601 does not authorize use of an unsworn written
declaration in lieu of such an acknowledgement. On
the other hand, an unsworn written declaration may
be used instead of a sworn verification on a
mechanic's lien statement filed under K.S.A.
60-1102. Cited herein: K.S.A. 1990 Supp. 53-601;
58-2211; K.S.A. 60-1102.

* * *

Dear Representative Allen:

You request our interpretation of K.S.A. 1990 Supp. 53-601. Specifically, you ask whether that statute "may be used with regards to documents pertaining to real estate transactions, such as, but not limited to deeds, mortgages and mechanic's liens."

K.S.A. 1990 Supp. 53-601 provides as follows:

"(a) Except as provided by subsection (b), whenever a law of this state or any rules and regulations, order or requirement adopted or issued thereunder requires or permits a matter to be supported, evidenced, established or proved by the sworn written declaration, verification, certificate, statement, oath or affidavit of a person, such matter may be supported, evidenced, established or proved with the same force and effect by the unsworn written declaration, verification, certificate or statement dated and subscribed by the person as true, under penalty of perjury, in substantially the following form:

"(1) If executed outside this state: 'I declare (or verify, certify or state) under penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct. Executed on (date).

"(2) If executed in this state: 'I declare (or verify, certify or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)'

"(b) The provisions of subsection (a) do not apply to the following oaths:

"(1) An oath of office.

"(2) An oath required to be taken before a specified official other than a notary public.

"(3) An oath of a testator or witnesses as required for wills, codicils, revocations of wills and codicils and republications of wills and codicils.

"(c) A notarial act performed prior to the effective date of this act is not

affected by this act. Nothing in this act diminishes or invalidates the recognition accorded to notarial acts by other laws of this state or rules and regulations adopted thereunder.

"(d) On or after July 1, 1989, whenever an officer or partner listed in subsection (b) of K.S.A. 17-2718, subsection (c) of K.S.A. 17-7504, subsection (c) of K.S.A. 17-7505, subsection (d) of K.S.A. 56-1a606 or subsection (d) of K.S.A. 56-1a607 and amendments thereto is required to execute a report before a notary or swear an oath before an officer authorized to administer oaths, in lieu thereof, such person may execute an unsworn declaration if such declaration is in substantial conformity with subsections (a), (b) and (c) of this section.

"(e) On or after July 1, 1991, subsections (a), (b) and (c) of this section shall have general application."
(Emphasis added).

The acknowledgement of real estate mortgages and deeds required under K.S.A. 1990 Supp. 58-2211 does not constitute a sworn written declaration, whereas the verified mechanic's lien statement required under K.S.A. 60-1102 must be a sworn verification. See D.J. Fair Lumber v. Karlin, 199 Kan. 366, 369 (1967); Kansas Lumber Company v. Wang, 12 Kan.App.2d 20, 22 (1987). Thus, applying the underscored language of the above-quoted statute, real estate mortgages and deeds must be acknowledged in accordance with the provisions of K.S.A. 1990 Supp. 58-2211, and K.S.A. 1990 Supp. 53-601 does not authorize use of an unsworn written declaration in lieu of such an acknowledgement. On the other hand, an unsworn written declaration may be used instead of a sworn verification on a mechanic's lien statement filed under K.S.A. 60-1102.

Very truly yours,



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