



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92- 122

Mr. Paul R. Oller  
Trego County Attorney  
117 N. Main  
WaKeeney, Kansas 67672

Re: Taxation--Property Valuation, Equalizing Assessments, Appraisers and Assessment of Property--Real Estate Sales Validation Questionnaires; Inapplicability to Certain Transfers of Title; Authority of Register of Deeds to Reference Exemption on Face of Deed

Synopsis: A register of deeds presented with a deed, other instrument transferring title to real estate or an affidavit of equitable interest in real estate that does not reflect an exemption listed in K.S.A. 1991 Supp. 79-1437e, as amended, may not insert the necessary language, or record the instrument unless it is accompanied by a real estate sales validation questionnaire. Cited herein: K.S.A. 19-1206; K.S.A. 1991 Supp 79-1437c, as amended by L. 1992, ch. 159, § 1; 79-1437e, as amended by L. 1992, ch. 159, § 2; K.S.A. 79-3104.

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Dear Mr. Oller:

You request our opinion regarding the authority of a register of deeds to insert language on the face of a deed in order to allow recording of the deed without an accompanying real estate sales validation questionnaire.

K.S.A. 1991 Supp. 79-1437c, as amended by L. 1992, ch. 159, § 1, prohibits the recording of any deed, other instrument providing for the transfer of title to real estate or affidavit of equitable interest in real estate that is not accompanied by a completed real estate sales validation questionnaire. Exceptions to this general rule are listed in K.S.A. 1991 Supp. 79-1437e(a), as amended by L. 1992, ch. 159, § 2. Subsection (b) of K.S.A. 1991 Supp 79-1437e, as amended, states:

"When a real estate sales validation questionnaire" is not required due to one or more of the exemptions provided in subsection (a), the exemption shall be clearly stated on the document being filed."

Clearly the document offered must contain language indicating the applicable exemption before it may be recorded without being accompanied by a questionnaire. Your concern is whether the register of deeds may insert such language after the deed has been executed and acknowledged.

In Attorney General Opinion No. 85-3 we concluded that "a register of deeds has no authority to allow changes to be made in the real estate records of the county" absent statutory authority to do so. While Opinion No. 85-3 discussed the authority to make changes in order to correct errors in the instrument, we believe the analysis in that opinion pertains to the situation before us:

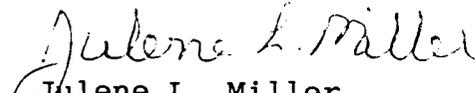
"Where an instrument is changed and is not re-executed and re-acknowledged, the original certificate of acknowledgement is rendered incorrect. . . . Further, under K.S.A. 19-1204, the register of deeds is required to 'safely keep and preserve all the books, records, deeds, maps, papers and microphotographs deposited or kept in his office.' (Emphasis added.) To allow deeds in his or her office to be changed is inconsistent with a register's duty to 'safely keep and preserve those deeds'." Attorney General Opinion No. 85-3, p. 3.

K.S.A. 1991 Supp 79-1437e does not authorize registers of deeds to insert the language signifying the exemption relied upon. (Compare K.S.A. 79-3104, 19-1206.) Rather, it appears

to be the responsibility of the parties seeking to file the instrument. Thus, a register of deeds presented with a deed, other instrument transferring title to real estate, or an affidavit of equitable interest in real estate that does not reflect an exemption listed in K.S.A. 1991 Supp. 79-1437e, as amended, may not insert the necessary language or record the instrument unless it is accompanied by a real estate sales validation questionnaire.

Very truly yours,

  
Robert T. Stephan  
Attorney General of Kansas

  
Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm