



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 11, 1978

ATTORNEY GENERAL OPINION NO. 78-11

Ruth L. Stukey
Register of Deeds
Coffey County Courthouse
Burlington, Kansas 66839

RE: Mortgages - Releases - Death of Mortgagee Prior to Recording of Release. K.S.A. 58-2306 as amended by Chapter 191 of the Session Laws of 1977.

SYNOPSIS: Where a mortgage has been paid in full prior to July 1, 1977, but the release of the mortgage was never entered on the original instrument on file, and the mortgagee died before executing an instrument as required the 1977 amendment to release a mortgage, the procedure should now be to request the Probate Court, having charge of the estate of the deceased mortgagee, to authorize and direct the administrator or executor to sign such a release instrument and record it as the personal representative of the deceased mortgagee.

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Dear Ms. Stukey:

You say that you have a recorded mortgage which was paid in full but there was a failure to request that such release and satisfaction be entered on the back of the original mortgage on file, as required by the law prior to the amendment contained in Chapter 191 of the Session Laws of 1977. This new amendment requires mortgage releases "duly acknowledged and certified as other instruments affecting real estate." You explain that the mortgagee has since died and such an instrument cannot be now executed by him. But you say that

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the mortgagee's estate is now in probate. You ask how this mortgage now can be properly released.

In our opinion the proper procedure now should be to request the Probate Court having charge of the mortgagee's estate to authorize and direct the administrator or executor of the estate, as the mortgagee's personal representative, to execute and record the statutory release instrument presently required.

Very truly yours,

A handwritten signature in cursive script that reads "Curt Schneider". The signature is written in dark ink and is positioned above the typed name.

CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw