



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

September 5, 1985

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ATTORNEY GENERAL OPINION NO. 85- 113

Linda Fincham
Register of Deeds
Marshall County
Marysville, Kansas 66508

Re: Taxation--Mortgage Registration--Exemption from
Payment of Mortgage Registration Fee

Synopsis: No mortgage registration fee shall be paid, collected or required upon the recording of a mortgage, the sole purpose of which is to make a correction of a previously recorded mortgage, if the registration fee was collected on such previously recorded mortgage. Cited herein: K.S.A. 79-3102, as amended by L. 1985, ch. 322, §1.

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Dear Ms. Fincham:

As Register of Deeds for Marshall County, you request our opinion concerning whether a mortgage registration fee should be collected upon the recording of a mortgage which was filed in order to correct an error in a previously recorded mortgage.

In a letter to this office, you explain that the problem arose when a mortgagee attempted to file with your office a mortgage which purported to correct a previously recorded mortgage. The corrected mortgage contained the name and signature of a mortgagor different than the one named in the original mortgage. A mortgage registration fee was charged and collected when the

original mortgage was recorded. You have asked whether such fee should be charged and collected upon the recording of the second mortgage as well.

K.S.A. 79-3102, as amended by L. 1985, ch. 322, §1, provides in part as follows:

"(a) Before any mortgage of real property, or renewal or extension of such a mortgage, is received and filed for record, there shall be paid to the register of deeds of the county in which such property or any part thereof is situated, a registration fee of \$.25 for each \$100 and major fraction thereof, of the principal debt or obligation which is secured by such mortgage, and upon which no prior registration fee has been paid.

. . . .

"(d) No registration fee whatsoever shall be paid, collected or required for or on: (1) Any mortgage or other instrument, given solely for the purpose of correcting or perfecting a previously recorded mortgage or other instrument;

. . . .

"(3) any mortgage or other instrument 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 or their assigns upon which the registration fee herein provided for has been paid."

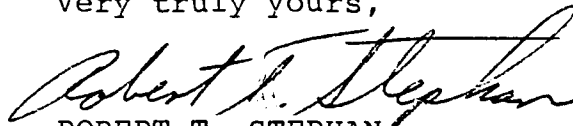
To begin with, the statute indicates that a mortgage registration fee shall not be collected more than once on the same indebtedness. Support for this interpretation may be found in Attorney General Opinion No. 75-382, which cites Fourth National Bank v. Hill, 181 Kan. 683, 698 (1957) as authority. Even if the mortgagor sells or assigns the property, if the lender/mortgagee remains the same no new registration fee need be paid. Attorney General Opinion No. 78-64. Only when a new debt is created must the mortgagee pay additional mortgage

registration fees. Applying these principles to the present inquiry, since both mortgages appear to cover the same debt, and since the lender/mortgagee is the same in both, the lender should not be doubly taxed by having to pay mortgage registration fees on the correcting mortgage as well as on the original mortgage.

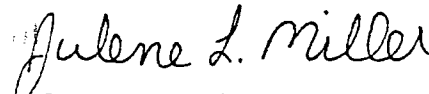
Secondly, subsection (d) (1) of K.S.A. 79-3102 as amended specifically states that no registration fee shall be required for any mortgage which is "given solely for the purpose of correcting or perfecting a previously recorded mortgage. . . ." Thus, if the second mortgage was indeed intended to correct the first, then no mortgage registration fee should be collected.

In conclusion, no mortgage registration fee should be collected upon the recording of a second mortgage which was filed solely to make a correction of a previously recorded mortgage on which a fee was paid. The second mortgage must, however, be properly executed and acknowledged before the register of deed will have the authority to record it. Attorney General Opinion No. 85-3. Also, the original mortgage must be released to remain in conformity with the view that there is but one debt and one mortgage. Since the original mortgage was found to be defective it should be removed from the files to avoid any confusion. Therefore, if both mortgagors' names and signatures are necessary to make the mortgage correct, the mortgagee will again have to file a mortgage correcting the situation which contains all the necessary signatures. A mortgage registration fee may not, however, be collected upon the presentation of the correcting mortgage.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Assistant Attorney General

RTS:JSS:JLM:jm