



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 90

Vernon L. Steerman
Osborne County Attorney
Courthouse, 2nd Floor
Osborne, Kansas 67473

Re: Taxation -- Judicial Foreclosure and Sale of Real Estate by County -- Order of Sale; Deed; Execution and Recordation

Personal and Real Property -- Conveyances of Land -- Recordation; Payment of Filing Fees; Purchase by County or City

Synopsis: K.S.A. 79-401 et seq. permit real estate to be placed on tax assessment rolls based upon consultation of the real estate transfer record in the office of the clerk and other documents. Although there is no general statutory authority requiring all instruments affecting title to real estate to be filed with the register of deeds' office, the deed to property sold at a judicial foreclosure sale conducted pursuant to K.S.A. 79-2801 et seq. must be recorded and filing fees paid by the successful bidder. If a county or city is the successful bidder at a judicial foreclosure sale, the deed must be filed in the office of the register of deeds and the filing fee paid by the city or county. Deeds to property sold by a county pursuant to K.S.A. 79-2804f or K.S.A. 19-211 may discretionarily be filed with the office of register of deeds. Cited herein: K.S.A. 1990 Supp. 19-211; K.S.A. 19-1201; K.S.A. 1990 Supp. 28-115; K.S.A. 58-2221; 58-2222; 58-2239;

K.S.A. 1990 Supp. 58-2242a; K.S.A. 79-401;
79-408; 79-2301; 79-2801; 79-2804; 79-2804f.

* * *

Dear Mr. Steerman:

As Osborne county attorney you request our opinion on the correct procedures for filing a deed with the register of deeds following a tax sale conducted pursuant to K.S.A. 79-2801 et seq. You specifically ask that we address the following issues:

"1. If County Clerk does not file deed there is no assurance that purchaser will file the deed and if the deed is not filed of record by purchaser, what is the de jure basis for placing the realty on the assessment and tax rolls? (This non-filing of deeds has been a continuing encounter in and for yearly tax foreclosure title searches)

"2. In the absence of statutory mandate how can the purchaser be legally compelled to file the deed and or to pay a deed registration fee?; and

"3. What statutory authority exists which empowers register of deeds to levy on and collect from City and or County entities deed recordation fees, since even 79-2804 specifies that: 'Any fee or charge for (deed filing) shall be collected (by sheriff) from the successful bidder at the time of (Sheriff's) sale and deposited with the register of deeds at the time of recording.'"

K.S.A. 79-401 et seq. generally set forth the correct procedures involved in listing real property for the purpose of taxation. The real estate assessment roll is completed by the county clerk in accordance with K.S.A. 79-408:

"In making up such assessment rolls, the county clerk shall consult the real estate transfer record in the office of the clerk, the records and plats in the office of the register of deeds, reports from United States land offices, and may require the owner or occupant of a particular property to furnish a proper description thereof." (Emphasis added).

Thus, documents concerning a tax sale or other real estate transfers recorded in the office of the clerk may be consulted for the purpose of placing property on the tax rolls in

accordance with K.S.A. 79-408 and may provide the legal basis for placing property on such rolls. See also K.S.A. 58-2239 and K.S.A. 1990 Supp. 58-2242a.

Your second question is how a purchaser of real property can be compelled to file a deed or pay the deed registration fee. We find no general statutory authority allowing the county to compel such a filing. K.S.A. 58-2221 provides that written instruments affecting real estate interests may be recorded in the office of register of deeds. See also K.S.A. 19-1201 et seq. A decision to file an instrument in the office of the register of deeds is often personal. Filings protect the legal interest of individuals owning property. See K.S.A. 58-2222. The register of deeds normally cannot mandate that a deed be filed.

However, K.S.A. 79-2804 requires recordation of the deed to property sold pursuant to this act. If anyone (an individual, a county or a city) purchases property at a tax sale conducted pursuant to K.S.A. 79-2801 et seq., K.S.A. 79-2804 requires that the deed be filed for record in the office of register of deeds:

"The deed shall be filed for record, by the sheriff at the time the deed is executed, in the office of the register of deeds of the county where such real estate is situated. Any fee or charge for such filing shall be collected from the successful bidder at the time of sale and deposited with the register of deeds at the time of recording. When the deed is filed it shall vest in the purchaser or grantee therein named, as against all persons, including, but not limited to, corporations and municipal corporations, parties to such proceedings, a fee simple title thereto, subject only to valid covenants running with the land and valid easement of record in use and subject to taxes and interest which have become a lien thereon, subsequent to the date upon which such judgment was rendered. Such deed shall be prima facie evidence of the regularity of all proceedings prior to the date of filing the same for record.

"After the sale and confirmation thereof by the court, an execution shall issue, upon praecipe of the county attorney,

county counselor or the purchaser, requiring the officer to deliver possession of the real estate, particularly describing it, to the parties entitled thereto, including the county. When the deed is executed to the county by the sheriff, it shall be filed for record forthwith in the office of the register of deeds. Thereupon the assessed valuation of such real estate shall be eliminated from the assessment and tax rolls until such time as such real estate is sold as provided by K.S.A. 79-2804f, and amendments thereto." (Emphasis added).

K.S.A. 79-2804f discusses subsequent resale procedures if a county originally purchased the real estate at a sale conducted pursuant to K.S.A. 79-2804. As you note, K.S.A. 79-2804f does not provide for the mandatory filing as set forth in K.S.A. 79-2804. Thus, when persons purchase property from a county pursuant to K.S.A. 79-2804f, it would appear that filing is discretionary on the part of the individual purchasing the property. Nothing in the procedures set forth at K.S.A. 79-2804f permit the county to compel the purchaser to file the deed with the office of the register of deeds. However, K.S.A. 1990 Supp. 19-211(c) appears to allow certain filings on property purchased from a county to occur without payment of a filing fee.

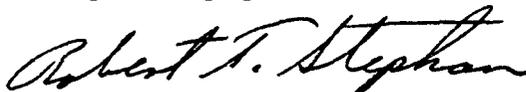
Your third question concerns payment of filing fees by a county or city. We believe that only the "successful bidder" is responsible for filing fees under K.S.A. 79-2804. Pursuant to K.S.A. 79-2804, a county may bid at a judicial foreclosure sale. This statute does not contain an exception to the payment of fees for recording a deed on property purchased by a county or a city. K.S.A. 1990 Supp. 28-115 generally discusses fees charged by a register of deeds for recordation of documents. The fee for recording the first page of a deed is \$6.00 and \$2.00 for each subsequent page. This statute does not contain an exception for deeds filed by a county or a city on property owned by such public entities. We find no statutory authority exempting counties or cities from payment of recordation fees associated with filing a deed or other written instrument affecting real property owned by a city or county. It does not appear to make a difference how such property was acquired; by purchase from an individual or at a judicial foreclosure sale. It is our opinion that recordation fees associated with filings in the office of register of deeds must be paid by public entities filing such instruments

unless a specific statutory provision exempts payment of a specific filing fee.

If a city or county is not the successful bidder or owner of the property, however, we find no authority allowing the register of deeds to charge filing fees against such entities. Rather, K.S.A. 79-2804 states that this fee is to be collected from the successful bidder at the time of the sale and deposited with the register of deeds at the time of recording. If the county or sheriff has collected this fee, as required by law, and is recording the deed as set forth in K.S.A. 79-2804, the fee thus collected from the successful bidder must be deposited with the register of deeds at that time.

In summary, K.S.A. 79-401 et seq. permit real estate to be placed on tax assessment rolls based upon consultation of the real estate transfer record in the office of the clerk and other records. Although there is no general statutory authority requiring all instruments affecting title to real estate to be filed with the register of deeds' office, the deed to property sold at a judicial foreclosure sale conducted pursuant to K.S.A. 79-2801 et seq. must be recorded and filing fees paid by the successful bidder at such sale pursuant to K.S.A. 79-2804. If a county or city is the successful bidder at a judicial foreclosure sale, the deed must be filed in the office of register of deeds and the filing fee paid by the city or county. Property sold by a county pursuant to K.S.A. 79-2804f or K.S.A. 19-211 may discretionarily be filed with the office of register of deeds.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls
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