

## 48 Op. Att'y Gen. No. 23

CLERKS - Duty of clerk and recorder to record document with multiple reconveyances and fee charged;  
COUNTIES - Duty of clerk and recorder to record document with multiple reconveyances and fee charged;  
FEES - Duty of clerk and recorder to record document with multiple reconveyances and fee charged;  
REAL PROPERTY- Duty of clerk and recorder to record document with multiple reconveyances and fee charged;  
MONTANA CODE ANNOTATED - Sections 7-4-2613, -2619, -2631, -2632 , 71-1-111, -211, -305;  
OPINIONS OF THE ATTORNEY GENERAL - 41 Op Att'y Gen. No. 11 (1985).

HELD:

1. A county clerk and recorder may not refuse to file a "blanket document" that contains a listing of multiple reconveyances of trust indentures, provided the appropriate fee is paid.
2. A county clerk and recorder must charge the fee described in Mont. Code Ann. § 7-4-2632 for each page of a blanket document.

December 20, 2000

Mr. Mike McGrath  
Lewis and Clark County Attorney  
228 Broadway, Courthouse  
Helena, MT 59601

Dear Mr. McGrath:

You have requested my opinion regarding the criteria a county clerk and recorder must use to determine the appropriate fee for "blanket documents." I have broken down your request into two issues which I have phrased as follows:

1. May a county clerk and recorder refuse to file a "blanket document" which contains a list of reconveyances of trust indentures?
2. If not, what is the appropriate fee for a clerk and recorder to charge for the filing of a blanket document?

You have indicated that questions have arisen with respect to the propriety and appropriate fee for filing "blanket documents" with the Lewis and Clark County clerk and recorder. A title insurance company attempted to file with the clerk's office a six-page document which was entitled a "Full Reconveyance." This document was a list of "reconveyances" of trust indentures that had been certified by the president of a title company and notarized.

As used in this opinion, the terms "reconveyance," "satisfaction of mortgage," "release of mortgage" and "discharge of mortgage" are intended to have the same meaning.

As many as 14 reconveyances were listed on one sheet of paper. The form for each reconveyance was roughly as follows:

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Grantor:	Name(s)
Beneficiary:	Name(s)
Recorded:	Date of recording, which book had the recording and at what page

The Lewis and Clark County clerk and recorder refused to accept and record the "Full Reconveyance" on the ground that each reconveyance must be on a separate sheet of paper and such multiple or blanket filings could not be accepted. The clerk relied upon an opinion from the Missoula County Attorney, dated May 1988, which opined that each assignment of a mortgage must be presented for filing to a clerk and recorder on a separate sheet of paper.

You have asked in your request what is the appropriate fee for such a document. Before addressing that question, however, I will address whether the clerk may refuse to accept and record "blanket documents."

The Lewis and Clark County clerk and recorder describes the recording process in this way. When the clerk receives a reconveyance for recording, the clerk has the reconveyance microfilmed. Two copies are made of the microfilm, one for use by the county records department and one for title companies. Handwritten on each of the microfilm copies are the book and page number of the original mortgage. The reconveyance is also photocopied for the Department of Revenue and title companies.

After the microfilming and photocopying, the clerk must index the reconveyance. See Mont. Code Ann. § 7-4-2619(5). The information from the release is also indexed pursuant to Mont. Code Ann. §§ 7-4-2619(1) and (2) and 71-1-211, which require indexing under the names of the grantors of the property and cross-indexing under the names of the grantees. The original is then returned to the person or entity that originally sent the mortgage release to the clerk.

There is little doubt that the clerk, as a general matter, must record reconveyances of trust indentures. Under Mont. Code Ann. § 7-4-2613(1)(a) the clerk must record releases of mortgages. The reconveyance of the trust indenture operates the same as a release or satisfaction of the mortgage. A trust indenture is considered a mortgage on real property and is subject to the laws relating to mortgages, except to the extent that the provisions dealing specifically with the small tract financing act, title 71, chapter 1, part 3, provide otherwise. Mont. Code Ann. § 71-1-305. Nothing in the small tract financing act addresses the duty of a clerk to record reconveyances. Therefore, under § 7-4-2613(1)(a), a clerk and recorder must record reconveyances of trust indentures.

Mont. Code Ann. § 71-1-211 describes the process for releasing a mortgage and provides:

(1) A mortgage shall be discharged upon the record thereof by the county clerk in whose custody it shall be whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assignee, acknowledged or proved and certified as in this code prescribed to entitle a conveyance to be recorded, specifying that such mortgage has been paid or otherwise satisfied or discharged.

(2) Every such certificate and the proof and acknowledgment thereof shall be recorded at full length, and a reference shall be made to the book and page containing such record in the mortgagor and mortgagee indexes as to the discharge of the mortgage.

The blanket filings of the reconveyances received by the Lewis and Clark County clerk and recorder contained the appropriate acknowledgment and certification showing the reconveyances of the trust indentures.

A clerk and recorder is required to record only those documents which are "authorized by law to be recorded." Rocky Mountain Timberlands v. Lund, 265 Mont. 463, 467, 877 P.2d 1018, 1021 (1994). In Rocky Mountain Timberlands, the Court held that, although the clerk had a general duty to record "deeds," the clerk had no duty to accept and record a "deed" that was not "authorized by law." In that case, the deed was improper and not authorized by law because it did not effectively operate as a transfer of property from one party to another. Instead, the purported deed was simply an attempt by one person to divide a parcel into two parts.

Here, with respect to reconveyances of trust indentures, the only requirements are those relating to releases of mortgages. In order to effectuate a release of a mortgage, the mortgagee or its agent must acknowledge and certify that such a release has taken place. Mont. Code Ann. § 71-1-111. Although § 71-1-111(1) states that "a certificate" must be presented to the clerk and recorder, there is no requirement for each certificate to be on a separate sheet of paper.

In the absence of a specific statutory requirement that each certificate of reconveyance must be on a separate sheet of paper, and as long as each reconveyance meets the statutory requirements for a release of a mortgage, the clerk and recorder is obligated to accept for filing a multi-page document listing more than one reconveyance on each page. See also 41 Op Att'y Gen. No. 11 (1985) (clerk may not refuse to accept trust indenture that does not include the amount secured and a maturity date).

The next question is what is the "appropriate fee" for accepting and recording such blanket documents. Mont. Code Ann. §§ 7-4-2631 and -2632 describe the fees which may be charged by a clerk and recorder. Section 7-4-2632 provides:

Where recording is done by photographic or similar process, the county clerk and recorder shall charge \$6 for each page or fraction of a page of the instrument for recording.

Because the Lewis and Clark County clerk and recorder does the recording by photographic and other mechanical means, this section controls the determination of the appropriate filing fee. By its plain language, Mont. Code Ann. § 7-4-2632 sets the general standard of a \$6-per-page filing fee. The legislative history of Mont. Code Ann. § 7-4-2632 supports the interpretation that this fee should be applied to blanket documents. In 1985, Mont. Code Ann. § 7-4-2632 was amended to increase the per-page fee from \$2.50 to \$5, and Mont. Code Ann. § 7-4-2631 was amended to delete a provision that allowed the clerk to charge \$.50 for each name that was indexed. This legislative history to these amendments indicates that the clerks and recorders had agreed to forego the \$.50 charge for indexing each name in exchange for the significant increase in Mont. Code Ann. § 7-4-2632. HB 77; Mins., House Local Gov't Comm., Jan. 8, 1985. There had been significant confusion caused by basing the filing fee upon the number of times the clerk had to index a transaction. To alleviate this confusion, the Montana Clerks and Recorders Association suggested the use of a flat fee based upon the number of pages in a recorded document. Applying this rationale and the intent to avoid confusion that is caused by basing the filing fee on the number of names to be indexed, I conclude that the \$6 flat fee per page is the appropriate fee for filing blanket documents, regardless of the number of transactions per page on the document.

THEREFORE, IT IS MY OPINION:

1. A county clerk and recorder may not refuse to file a "blanket document" that contains a listing of multiple reconveyances of trust indentures, provided the appropriate fee is paid.
2. A county clerk and recorder must charge the fee described in Mont. Code Ann. § 7-4-2632 for each page of a blanket document.

Sincerely,

JOSEPH P. MAZUREK  
Attorney General

jpm/elg/dm