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FEE TO BE CHARGED BY COUNTY RECORDER FOR RECORDING ASSIGNMENTS OF MORTGAGES, LEASES, AND LIENS—§§317.32 (A), .32 (B), .32 (G) R.C., 2127.19, R.C.

SYLLABUS:

1. Where a typewriter is used by the county recorder to record assignments of mortgages and leases, partial releases and mortgages and satisfactions of mortgages which are made by separate instruments, the fee to be charged for such recording is set forth in Section 317.32 (A), Revised Code, and when in conjunction with such recording the county recorder places a notation upon the margin of the record of the original lease or mortgage, the fee to be charged for such notation is included in the fee set forth in Section 317.32 (B), Revised Code.

2. When a mortgage or lien is released or satisfied by court order, pursuant to the provisions of Section 2127.19, Revised Code, and a marginal entry is made upon the records of the county recorder as required in said section, the fee to be charged for such marginal entry is that set forth in Section 317.32 (G), Revised Code.

Columbus, Ohio, October 13, 1960

Hon. Philip D. Brumbaugh, Prosecuting Attorney
Darke County, Greenville, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

“Your opinion is respectfully requested of the following matter:

“In this county deeds of conveyance, mortgages and some other instruments of writing are recorded by photo copy or similar process.

“Assignments and satisfactions of mortgages and leases are recorded by marginal entry when the same may be entered in a legible manner. Frequently, assignments of mortgages and leases, partial releases of mortgages, satisfactions of mortgages by separate instruments and by court order are of such length that they cannot be recorded by marginal entry. There have been recorded in this county in separate record volumes through the use of a typewriter, a reference to such separate volume being entered on the margin of the original record.

“What is the proper fee to be charged by the county recorder for these latter services: Twenty-five cents for each hundred words (Sec. 317.32 (A)), or fifty cents (Sec. 317.32 (G))?

“Your attention is also directed to the provisions of Secs. 2303.20 (L) and 2127.19.”

In answering your request, I will first consider the fees to be charged by the county recorder for assignments of mortgages and leases, partial releases and satisfaction of mortgages which are made by separate instruments other than by court orders when such instruments are copied for record by the recorder by typewriting.

As to the cancellation, partial release or assignment of a lease, your attention is called to Section 5301.33, Revised Code, which reads in pertinent part as follows:

“* * *

“A lease, whether or not renewable forever, which is recorded in any county recorder’s office, may also be canceled, partially released or assigned by deed or by other separate instrument acknowledged and witnessed as provided in section 5301.01 of the Revised Code. Unless in the form of a deed, a separate in-

strument of cancellation, partial release, or assignment, shall be recorded in the record of leases provided for by section 317.08 of the Revised Code and the recorder shall charge the fee for such recording as provided in section 317.32 of the Revised Code for recording deeds.

“When a lease has been canceled, partially released, or assigned by deed or by other separate instrument and such deed or other separate instrument recites the recorder’s file number of the original lease or the volume and page of the record wherein the original lease is recorded, the recorder shall note on the margin of the record of the original lease the recorder’s file number of such deed or other separate instrument or the volume and page of the record wherein the same is recorded.”

“* * *”

Section 317.08, Revised Code, which is referred to in the above quotation, establishes five separate sets of records to be kept by the county recorder, the last of which is a record of leases.

As to the assignment or partial release of a mortgage by separate instrument, your attention is called to Section 5301.32, Revised Code, which reads as follows:

“A mortgage may be assigned or partially released by a separate instrument of assignment or partial release, acknowledged and witnessed as provided by section 5301.01 of the Revised Code. Such separate instrument of assignment or partial release shall be recorded in the book provided by section 5301.34 of the Revised Code for the recording of satisfactions of mortgages, and the county recorder shall be entitled to charge the fee for such recording as provided by section 317.32 of the Revised Code for recording deeds.”

Section 5301.34, Revised Code, reads as follows:

“A mortgage must be discharged upon the record thereof by the county recorder when there is presented to him a certificate executed by the mortgagee or his assigns, acknowledged and witnessed as provided in section 5301.01 of the Revised Code, certifying that the mortgage has been fully paid and satisfied. In addition to the discharge on the records by the recorder, such certificate shall be recorded in a book kept for that purpose by the recorder. Such recorder is entitled to the fees for such recording as provided by section 317.32 of the Revised Code for recording deeds.”

Section 317.32, Revised Code, establishes fees to be charged by the county recorder and reads in pertinent part as follows:

“For his services, the county recorder shall charge and collect the following fees:

“(A) For recording manually or through the use of a typewriter a mortgage, deed of conveyance, power of attorney, or other instrument of writing, twenty-five cents for each hundred words actually written, typewritten, or printed on the records;

“(B) “For indexing it, ten cents for each grantor and each grantee in such instrument;

“* * *

“(G) For recording assignment or satisfaction of mortgage or lease or any other marginal entry, fifty cents;

“* * *”

Since Section 5301.33, Revised Code, dealing with cancellations and assignments of leases by separate instrument and Sections 5301.32 and 5301.34, Revised Code, dealing with assignments, partial assignments and discharge of mortgages by separate instruments, provide that the fees to be charged for the recording of such instruments should be those set forth in Section 317.32, Revised Code, for the recording of leases or deeds, it must follow that when a typing process is used the fees to be charged are those set forth in Section 317.32 (A), Revised Code.

The notation made on the record of the original instrument by the county recorder showing where the actual assignment, release or other document affecting such instrument may be found in his records, does not appear to constitute a marginal entry within the meaning of that term as used in Section 317.32 (G), Revised Code. In view of the content of the recording laws heretofore discussed, and of the intent of the legislature in the enactment of such laws, I am of the opinion that a “marginal entry” as used in said Section 317.32 means an entry made on the margin of a record which in and of itself has some effect, be it an assignment, release, cancellation, or otherwise, upon the relation of the parties to the instrument upon which it is made. The notation referred to in your letter is merely a means of indicating to any person reading the record that a subsequent transaction can be found elsewhere. It is therefore a part of the indexing of such subsequent transaction and where typewriting is used, the cost of such notation would be included in the indexing fee set forth in Section 317.32 (B), Revised Code.

As to the fee to be charged by the county recorder when recording court orders which cause a release or satisfaction of mortgages or other

liens upon real estate, you refer to Sections 2303.20 (L) and 2127.19, Revised Code. Section 2303.20 (L), Revised Code, deals exclusively with fees to be charged by the clerk of courts and therefore can in no way affect the fees charged by the county recorder.

Section 2127.19, Revised Code, referred to in your letter, reads as follows:

“When an action to obtain authority to sell real estate is determined by the probate court, the probate judge shall make the necessary order for an entry of release and satisfaction of all mortgages and other liens upon the real estate except such mortgage as is assumed by the purchaser. The executor, administrator, or guardian shall thereupon enter such release and satisfaction, together with a memorandum of the title of the case, the character of the proceedings, and the volume and page of record where recorded, upon the record of such mortgage, judgment, or other lien in the office where it appears as matter of record. If the executor, administrator, or guardian fails to enter such release and satisfaction, the court may, on the application of an interested party, enter such release and satisfaction and tax in his cost bill the fee provided by law for entering such release and satisfaction, and a fee of twenty-five cents to the court.”

It is clear from the above stated section, as it relates to records of the county recorder, that the fiduciary is required to cause a marginal entry to be placed upon such records, which entry states the title of the case, character of the proceedings and the volume and page in the court records where such proceedings may be found. Since such a marginal entry, in and of itself, affects the interests of the parties to the instrument upon which it is made, and, as far as the recorder's records are concerned, such entry is the only place in such records which indicates the change, it must follow that the recorder would charge the fee set forth in Section 317.32 (G), Revised Code, when making such entry.

In accordance with the above, it is my opinion and you are advised:

1. Where a typewriter is used by the county recorder to record assignments of mortgages and leases, partial releases and mortgages and satisfactions of mortgages which are made by separate instruments, the fee to be charged for such recording is set forth in Section 317.32 (A), Revised Code, and when in conjunction with such recording the county recorder places a notation upon the margin of the record of the original lease or mortgage, the fee to be charged for such notation is included in the fee set forth in Section 317.32 (B), Revised Code.

2. When a mortgage or lien is released or satisfied by court order, pursuant to the provisions of Section 2127.19, Revised Code, and a marginal entry is made upon the records of the county recorder as required in said section, the fee to be charged for such marginal entry is that set forth in Section 317.32 (G), Revised Code.

Respectfully,
MARK MCELROY
Attorney General