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FILE NO. S-1154

OFFICERS:
County Recorder's
Signature on Trust
Deeds

Honorable John J. Bowman
State's Attorney
DuPage County
207 South Reber Street
Wheaton, Illinois 60187

Dear Mr. Bowman:

This is in response to your letter concerning the appointment of the county recorder as a trustee under a trust deed which is in the nature of a mortgage. You ask two questions in this regard:

1. Must a county recorder of deeds accept trusteeship of a trust deed when requested by private citizens to do so?
2. Does the county recorder of deeds' signature upon a trust deed give evidence of his acceptance of trusteeship if so named in the deed, since such signature is necessary and affixed for purposes of recording?

Honorable John J. Bowman - 2.

It is my opinion that a county recorder is under no duty to accept trusteeship of a trust deed in the nature of a mortgage when so appointed by the mortgagor. The recorder's signature upon the trust deed is placed thereon pursuant to statutory duty and therefore will not serve to establish the recorder's acceptance of the trusteeship.

The office of recorder of deeds is created by section 4(c) of article VII of the Illinois Constitution of 1970 and pursuant to section 4(d) of article VII of the Illinois Constitution, the duties of that office are those which are prescribed by law or county ordinance. Therefore, the county recorder is under a duty to accept trusteeship under a trust deed only if so required by statute or county ordinance. Because there is no statute imposing this duty upon a county recorder, and because there is apparently no county ordinance to this effect in DuPage County, I must conclude that the DuPage County recorder is under no duty to accept trusteeship under a trust deed in the nature of a mortgage when so requested by a mortgagor.

With regard to your second question, in the case of In re Estate of Kaindel, 1 Ill. 2d 1, the Illinois Supreme

Honorable John J. Bowman - 3.

Court recognized that a county recorder may act in his official capacity as a trustee or successor trustee under a trust deed. Because an individual must consent to act as a trustee before he can be considered to have accepted a trusteeship or to be vested with title to the property (Darmstadt v. Horwitz, 298 Ill. App. 523), the recorder would have to express his acceptance of the trusteeship.

Where a trust is created by deed, the most effectual mode of signifying acceptance of the trust by the trustee is by his signing the deed. (Patterson v. Johnson, 113 Ill. 559.) However, this mode of acceptance is equivocal at best in the case of a county recorder's signature upon a trust deed because he is under a duty to sign any instrument recorded in his office as directed by section 11 of "AN ACT to revise the law in relation to recorders". (Ill. Rev. Stat. 1975, ch. 115, par. 11.) This section states:

"§ 11. When any instrument in writing is recorded in the recorder's office, the recorder shall indorse upon such instrument a certificate of the time (including the hour of the day) when the same was received for recordation (which shall be considered the time of recording the same), and the book and page in which the same is recorded. The recorder shall sign the certificate or shall affix his facsimile signature thereto.

The certificate, when signed by the recorder, or to which he has affixed his

Honorable John J. Bowman - 4.

facsimile signature, shall be evidence of the facts therein stated."

Because the recorder places his signature upon an instrument in fulfillment of statutory duty, it cannot be said that such signature represents his express or implied consent to accept a trusteeship; something more is necessary, such as action taken under the trust deed. See In re Estate of Kaindel, 1 Ill. 2d 1; Crocker v. Lowenthal, 83 Ill. 579. I therefore conclude that the recorder's signature, by itself, does not establish his acceptance of trusteeship if so named in a trust deed in the nature of a mortgage.

Very truly yours,

A T T O R N E Y G E N E R A L