

CLERKS - Information required to be in trust indenture as condition precedent to filing by clerk and recorder;
LIENS - Information required to be in trust indenture as condition precedent to filing by clerk and recorder;
MONTANA CODE ANNOTATED - Sections 7-4-2613, 7-4-2618, 7-4-2619(3) and (4), 70-21-101, 70-21-202, 70-21-203, 71-1-204, 71-1-303(4), 71-1-304(1), 71-1-305.

HELD: A county clerk and recorder may not refuse to accept for filing a trust indenture which does not include an amount secured and a maturity date.

26 April 1985

Harold F. Hanser
Yellowstone County Attorney
Yellowstone County Courthouse
Billings MT 59101

Dear Mr. Hanser:

You have requested my opinion on the following:

Must a county clerk and recorder accept for filing a trust indenture which does not include an amount secured and a maturity date?

I conclude that, because an amount secured and the maturity date are not among the types of information required to be indexed by the clerk and recorder or otherwise specifically required as a condition precedent to filing, the clerk and recorder must accept such trust indenture for recordation.

The term "trust indenture" is defined in section 71-1-303(4), MCA, as "an indenture ... conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary." Trust indentures may be used to convey real property interests in areas not exceeding 15 acres. § 71-1-304(1), MCA. A trust indenture is deemed to be a mortgage as to the affected property and is generally subject to all laws relating to mortgages. § 71-1-305, MCA.

Under sections 7-4-2613(1) and 70-21-202, MCA, clerk and recorders are required to accept mortgages for filing. The only stated conditions precedent to that obligation are payment of required fees (§ 7-4-2613, MCA), the mortgagee's address (§ 7-4-2618, MCA), and proper acknowledgment of the parties' execution (§ 70-21-203, MCA). The clerk and recorder, moreover, maintains two indices for recorded mortgages relevant to this matter. § 7-4-2619(3) and (4), MCA. These indices must reflect the names of the mortgagor and mortgagee, the date of the mortgage, the place of filing, the place of recording, the date of filing and, when applicable, the date of cancellation.

Section 70-21-101, MCA, although dealing specifically with abstracts of documents affecting interests in real property, further indicates that an amount secured and a maturity date are not filing prerequisites. That section permits filing of abstracts if they contain, among other information, acknowledgment of the parties' execution, their names and addresses and a description of the property; neither the amount secured nor the maturity date need be included in the abstract. Since an abstract may be filed in lieu of the underlying document, it would be anomalous to require, as a condition to filing the document itself, that it contain information not required in the abstract.

I conclude therefore that, in the absence of a specific statutory requirement that the amount secured and maturity date be set forth in a mortgage or trust instrument before the clerk and recorder may file it, such officer is obligated to perform the ministerial task of accepting the document for recordation without that information. See Huttinga v. Pringle, 40 St. Rptr. 1444, 1448, 668 P.2d 1068, 1072 (1983); Bionomic Church of Rhode Island v. Gerardi, 414 A.2d 474, 476 (R.I. 1980).

Finally, nothing in section 71-1-204, MCA, compels a different result. That section provides that a mortgage "may be made in substantially" the form set forth therein which includes reference both to the amount secured and the maturity date. First, use of the permissive "may" reflects that the form is merely suggestive and not mandatory. Second, the definition of "trust indenture" in section 71-1-303(4), MCA, does not limit the obligation for which the property is secured

to monetary amounts. Third, and most important, section 71-1-204, MCA, is both facially and in general purpose unrelated to the question of what information a mortgage or trust indenture must contain before the clerk and recorder is obligated to record it; had the Legislature intended inclusion of certain information, aside from that described above, to be a condition precedent to filing, it would have clearly so stated.

THEREFORE, IT IS MY OPINION:

A county clerk and recorder may not refuse to accept for filing a trust indenture which does not include an amount secured and a maturity date.

Very truly yours,

MIKE GREELY
Attorney General