

RECORDER OF DEEDS)
CHATEL MORTGAGES)

Duty of recorder with reference to filing
and recording. Sections 11543, 11544 and
11545. R. S. Mo. 1929. ✓

February 14, 1933.

FILED

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Law Department
City of St. Louis
City Hall
St. Louis, Missouri

Attention: Mr. Oliver Senti

Dear Mr. Senti:

Your letter of February 8th, addressed to the
Attorney-General enclosing copy of request for opinion,
has been handed the undersigned for attention. In connection
with the matter you submit the following facts and inquiry:

"Under date of November 5, 1931, the
Attorney General's office advised the
Recorder, through this office, that a
chattel mortgage on an electric re-
frigerator, when merely filed in the
Recorder's office, did not give notice
of the lien to subsequent purchasers
of the real estate.

Mr. Perry Post Taylor to-day presented
a similar instrument to the Recorder,
and requested that it be filed as a
chattel mortgage, notwithstanding that
it gave no notice to subsequent pur-
chasers of the real estate. The Recorder
of Deeds is under the impression that he
cannot lawfully file the instrument as a
chattel mortgage, and that he can only
accept it for recording in the real
estate records."

We will set forth a synopsis of the statutory
provisions which may be pertinent to the inquiry as made.

Section 11543, R. S. Mo. 1929, is a mandatory

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provision with reference to the duties of recorders in recording various instruments pertaining to real estate and chattels, which have been properly acknowledged.

Section 11544, R. S. No. 1929, requires certain instruments to be recorded in separate books according to their classifications.

Section 11545, R. S. No. 1929, regarding personal property is as follows:

"Instruments in writing, conveying chattels or personal property alone, which by any law of this state are required to be recorded or admitted of record in any recorder's office in this state, shall be recorded in a series of volumes separate from those used for recording conveyances of real estate."

Section 11564, R. S. No. 1929, provides for a liability of the recorder for a neglect or refusal of official duty, and Section 11585, R. S. No. 1929, prescribes the penalties for such neglect and refusal.

The recorder, you say, states that a Mr. Perry Post Taylor appeared at his office with a chattel mortgage given upon an electric refrigerator, and requested that it be filed as a chattel mortgage.

This official is desirous of knowing, if upon the presentation of this mortgage and upon the request of Mr. Taylor, as aforesaid, it is his duty under the statute to follow the instruction so given him and treat the same as a chattel mortgage in accordance with the request, or should he refuse to so accept said instrument, except only upon the condition that Mr. Taylor have it recorded in the real estate record or in both the real estate and chattel mortgage record.

We assume that the instrument was in truth and in fact what it purported to be, namely, a chattel mortgage; that it was in the ordinary form of such instruments and described therein only chattel property. Unless there was

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something within the description of the property designating that the personal property as described was to become affixed to a particular piece of real estate, thus and thereby becoming a part thereof, the recorder would have no reason for treating the written instrument other than as one affecting only personal property. There is no duty resting upon the recorder to make a personal investigation to ascertain whether or not the personal property might become affixed to real estate.

Under the facts you state, we are of the opinion that the recorder would have no other alternative than to file the chattel mortgage as requested and in accordance with Section 11545, R. S. Mo. 1929.

Yours very truly,

CARL C. ABINGTON
Assistant Attorney-General.

APPROVED: _____

ROY McKITTRICK
Attorney-General.

CGA:EG