

RECORDER: Under laws of 1935 Recorder is to charge no fee for discharging a chattel mortgage from the record.

8-28  
August 28, 1935.



Honorable Elmer Hicklin  
Recorder of Deeds  
Kennett, Missouri

Dear Sir:

We acknowledge your request for an opinion dated August 22, 1935, which reads as follows:

"You will pardon me for annoying you at this time, but I am in possession of the Session Acts of 1935 and note on page 209 of Section No. 3099 which is in lieu of Section 3099 of the Revised Statutes of Missouri, 1929, regarding the filing fee of chattel mortgages. I note the section provides for a fee of 20¢ for filing which in turn the Recorder shall note thereon the time of filing such instrument or copy. In this county in a number of cases we are presented with an original and a copy and they desire that the copy or original be filed and one to be stamped and returned to the mortgagee or cestui que trust. I am just wondering if I am entitled in such cases to charge as the old way of 20¢ per copy and too if at this time I should make the change by charging 20¢ instead of the old fee of 10¢ per copy.

"Trusting that you can enlighten me on the above and assuring you if you are a candidate for Governor or what not, I am for you."

Laws of 1935, page 209, Sections 1 and 3099 repeal Section 3099 R. S. Mo. 1929, and provided in lieu thereof as follows:

"Section 1. That Section 3099 of the Revised Statutes of Missouri, 1929, be and the same is hereby repealed, and a new section, to be known by the same number and pertaining to the same subject, is hereby enacted in lieu thereof, to read as follows:

"Section 3099. Such recorder shall enter in a book, to be provided by him for such purpose, the names of all the parties to such instrument, arranging the names of such mortgagors or grantors alphabetically, and shall note thereon the time of filing such instrument or copy, for which such recorder shall receive a fee of twenty cents. Said fee shall also include and cover all costs for discharging said mortgage or deed of trust according to the methods hereinafter provided. Such mortgage or deed of trust, when satisfied, shall be discharged by any of the following methods:

"1. By the mortgagee, cestui que trust, his agent or assigns, on the margin of such index, which shall be attested by the recorder.

"2. Upon the presentation by the mortgagor or grantor of the original mortgage or deed of trust, and upon such mortgagor or grantor making affidavit before such recorder that the instrument presented by him is the original of the copy on file, and that such mortgage or deed of trust has been fully paid and satisfied.

"3. Upon presentation or receipt of an order in writing, signed by the mortgagee or cestui que trust thereof, attested by a justice of the peace, or any notary public, stating that such instrument has been paid and satisfied.

"When any of these provisions have been complied with, it shall be the duty of the recorder to enter in a column for that purpose the word 'satisfied,' giving date. When a chattel mortgage shall be satisfied as above provided, the recorder may deliver said mortgage to the holder of the note secured thereby, or, if the holder of said note refuse to receive the same the recorder may destroy said mortgage; Provided, that the recorder may deliver to the parties entitled thereto, or destroy all such mortgages now remaining on file in his office and which have been entered satisfied on the chattel mortgage register."

CONCLUSION.

The old law went out of existence and the new law came into effect ninety days after adjournment of the Legislature, that is to say, ninety days after May 29, 1935, which would be on August 27, 1935.

The new law, by its very terms, repeals the old law in toto. Fees once chargeable for recording or discharging a chattel mortgage under the old law are not chargeable under the present law, unless the exaction of such fees be provided for in the new law. Under the present law, set out supra, no provision is made for charging a fee for discharging a chattel mortgage, hence no fee for discharging a chattel mortgage can be legally charged, even though there be prescribed a statutory duty to and method of discharge. The only fee chargeable under the new law is the twenty cent fee for filing the original or copy of the chattel mortgage.

Chattel mortgages filed previous to the date the new law went into effect must be discharged exactly as they were discharged under the old law, but without fee. There is no change in the method of discharge. In such cases the Legislature has required of the Recorder a duty to perform a gratuitous service.

Respectfully submitted

APPROVED:

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(Acting) Attorney General.

WM. ORR SAWYERS.  
Assistant Attorney General.