

MORTGAGES: Method of releasing chattel mortgage.

January 24, 1936.

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Hon. Gerald J. Donworth,
Recorder of Deeds,
St. Louis County,
Clayton, Missouri.

Dear Sir:

This department is in receipt of your letter of January 18 inquiring as to the proper cancellation when chattel mortgages are released. Your letter is as follows:

"It has always been my contention that the notes described in a filed chattel mortgage should be presented for cancellation when the mortgage is released. I have recently been requested to make releases upon presentation of a statement by the mortgagee, sworn to before a Notary Public or Justice of the Peace and without the presentation of the note. This form of release is in compliance with the 3rd article of Section 3099 of the 1935 Session Acts.

"This section does not mention the notes and as it has always been customary to present same, I have hesitated to grant the request. Any subsequent purchaser of a note secured by a filed chattel mortgage would have no protection, it seems, from a fraudulent release if this sort of release would be legal.

"Kindly advise at your earliest convenience if the acceptance of a release of this nature would cause any liability on the part of the Recorder of Deeds."

In 1935 the Legislature repealed Section 3099, R.S. Mo. 1929 and enacted in lieu thereof a new section of the same number, said section being as follows: (Laws of Mo. 1935, p. 209)

"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 said 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."

Thus it will be noted that a chattel mortgage may be satisfied (1) by the mortgagee satisfying same on the margin of the index; (2) by the mortgagor presenting the chattel mortgage and making affidavit that the chattel mortgage presented by him is the original of the copy on file; (3) upon presentation of a sworn statement by the mortgagee that the mortgage has been paid.

In the case of *Rogers v. Davis*, 194 Mo. App. 378, the Court held that it was not necessary to release a lien by the methods as found in the statute, but that a mortgagee could waive his rights by his own actions. The Court said (l.c. 388):

"As to the merits, appellant contends that the oral consent of Hawkins to the trade made by Brown did not operate to release the mare from the lien of Hawkins' mortgage. It is conceded that the ruling in *Coffman v. Walton*, 50 Mo. App. 404, is contrary to this contention, but it is pointed out that section 2863, Revised Statutes 1909, was subsequently enacted, and it is argued that property may now be released from the lien of a chattel mortgage only in one of the ways prescribed by this action. But we regard this argument as unsound. The statute merely makes provisions for releasing of record chattel mortgages that have been satisfied. A mortgagee may fully waive his rights under a chattel mortgage though the same remain unreleased of record. This Hawkins did in the instant case by consenting to the exchange of the mare for the negro's horse. (See *Coffman v. Walton*, supra; *Love v. Scott*, 179 Mo. App. 351, 166 S.W. 856; 7 Cyc. 74; *Jones on Chattel Mortgages* (5 Ed.), sec. 456, and authorities cited.)

And in the case of *Brown v. Koffler*, 133 Mo. App. 494, it was held that the releasing of a chattel mortgage is bona fide evidence of payment, subject to be overcome by oral evidence. The Court said (l.c. 500-502):

"The principal contention of defendants is that the court erred in admitting the chattel mortgage in evidence over their objection, and in refusing to give a peremptory instruction to the jury to return a verdict in their favor. The ground of this contention is that since the release of the mortgage by the recorder of deeds should be regarded as a 'quasi-judicial act' of a public officer, the mortgage could not be foreclosed in an action at law until after the release had been set aside in a proceeding in equity. That the action is one at law for the foreclosure of the mortgage is a proposition conceded by plaintiff and abundantly supported by the adjudicated cases. (*Carr v. Holbrook*, 1 Mo. 240; *Thayer v. Campbell*, 9 Mo. 280; *Riley's Admr. v. McCord's Admr.*, 24 Mo. 265; *Fithian v. Monks*, 43 Mo. 502; *State ex rel. v. Evans*, 176 Mo. 310; *Rubey v. Coal Mining Co.*, 21 Mo. App. 159) The petition does not seek a cancellation of the release nor was the obtaining of such release necessary to the prosecution of the suit. Aside from giving notice and in contests between mortgagor and mortgagee, the statutory entry of satisfaction of a mortgage or deed of trust has no greater force or effect than a receipt acknowledging payment of the debt. It is prima facie evidence of payment but, like a receipt, is open to explanation and its effect may be overcome by oral evidence showing that, in fact, no payment was made. A direct proceeding to impeach such entry is not required. (*Valle's Admr. v. American Iron Mountain Co.*, 27 Mo. 455; *Seiberling v. Tipton*, 113 Mo. 373; *Joerdens v. Schrimpf*, 77 Mo. 383; *Lanier v. McIntosh*, 117 Mo. 508; *Sells v. Tootle*, 160 Mo. 606; *Luther v. Clay*, 28 S.E. 46) In attacking by parol evidence the verity of the release, plaintiff did not enlarge the scope of the cause of action pleaded. She was

entitled to meet the prima facie evidence of payment offered by the release by evidence to the effect that no such payment was made to her nor to one authorized to receive it as her agent and that the release was entered by her mother without authority."

CONCLUSION

It is the opinion of this department that when a chattel mortgage is satisfied by one of the above mentioned statutory methods, you as Recorder of Deeds have fully complied with the law and would incur no liability in the event there was fraud in connection with the release of the mortgage.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General

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