

CHATTEL MORTGAGES: Chattel mortgages that have been filed and not recorded may be subsequently withdrawn and duly recorded, according to law.

March 1, 1937



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

Dear Mr. Donworth:

This will acknowledge receipt of your request for an opinion, which reads as follows:

"Occasionally, we are requested to withdraw a filed Chattel Mortgage from our files and to record same.

If the original Chattel Mortgage properly acknowledged before a Notary Public was filed, would it be in violation of the Missouri statutes to comply with such requests?"

We direct your attention to Section 3097, R. S. Mo. 1929, relating to when mortgages of personalty may be filed or recorded. It reads as follows:

"No mortgage or deed of trust of personal property hereafter made shall be valid against any other person than the parties thereto, unless possession of the mortgaged or trust property be delivered to and retained by the mortgagee or trustee or cestui que trust, or unless the mortgage or deed of trust be acknowledged or proved

and recorded in the county in which the mortgagor or grantor resides, in such manner as conveyances of land are by law directed to be acknowledged or proved and recorded, or unless the mortgage or deed of trust, or a true copy thereof, shall be filed in the office of the recorder of deeds of the county where the mortgagor or grantor executing the same resides, and in the case of the city of St. Louis, with the recorder of deeds for said city, or, where such grantor is a non-resident of the state, then in the office of the recorder of deeds of the county or city where the property mortgaged was situated at the time of executing such mortgage or deed of trust; and such recorder shall indorse on such instrument or copy the time of receiving the same, and shall keep the same in his office for the inspection of all persons; and such mortgage or deed of trust, or copy thereof, may be so filed, although not acknowledged, and shall be as valid as though the instrument were fully spread upon the records of the county, or, in case of the city of St. Louis, upon the records of said city, in the office of the recorder of deeds; and such instrument, when acknowledged and recorded, or when the same, or a copy thereof, shall have been filed, as above provided, shall thenceforth be notice of the contents thereof to all the world."

It is to be noted from the above section that it has for its purpose the imparting of notice to the world of chattels that have been mortgaged, and, that mortgages of personalty not filed, or recorded, would be void except as between the parties. *Bank v. Powers*, 134 Mo. 432. The obvious purpose

of the statute was to protect the mortgagee in any interest that he may have in the mortgaged personalty.

It is to be further noticed that the above section is written in the alternative and when so written we construe the word "or" to mean either. *Dodd vs. Independence Stove & Furnace Co.* 51 S. W. (2nd) 114.

In the case of *Joplin Supply Co. vs. West*, 135 S. W. 156, 1. c. 161, the Springfield Court of Appeals speaking of the construction of a statute said:

"Statutes must be construed in reference to the subject-matter, the object which prompts and induced their enactment and the mischief they are intended to remedy."

Thus, it may be seen that mortgages of personalty may be proved and recorded as conveyances of land, or a true copy of such mortgages may be filed. If the interest of the mortgagee may better be served by the withdrawing of the filed chattel mortgage and subsequent recording, the statutes make no inhibition regarding such procedure. The various reasons that the mortgagee might withdraw the filed mortgage and record the same, need not be discussed.

CONCLUSION

It is the opinion of this department that a chattel mortgage may properly be filed with the recorder of deeds and subsequently be withdrawn and recorded in the manner in which conveyances of land are proved and recorded.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
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RCS:RT