

**MOTOR VEHICLES:** Finance company, under chattel mortgage with provision of power for sale, can repossess without filing suit.

September 20, 1938 9/24

Colonel B. M. Casteel, Supt.,  
Missouri State Highway Patrol,  
Jefferson City, Missouri.



Dear Sir:

We acknowledge receipt of your letter of September 16, 1938, requesting an opinion from this office, in compliance with a request to your department made by Capt. Lewis B. Howard, Commanding Officer of Troop "D", Springfield, Missouri, which reads as follows:

"1. A number of automobile finance companies in this district have always made it a practice when payments on automobiles which are mortgaged to them have become delinquent to take possession of these automobiles where ever they happen to find them, without any process of law whatever.

"2. They justify this action under the terms of the standard chattel mortgage, a copy of which is attached hereto for the information of the Attorney General.

"3. The question for opinion is whether or not these finance companies have the right under this chattel mortgage to summarily take possession under the terms of this chattel mortgage of a properly registered motor vehicle, the owner of which has been issued a Missouri certificate of title."

Under chattel mortgages which do not include the power of sale, a foreclosure can only be had by filing a petition in the office of the circuit court. This procedure should follow Section 3060, R. S. Mo. 1929, which reads as follows:

"All mortgagees of real estate or personal estate, including leasehold interests, when the debt or damages secured amounts to fifty dollars or more, may file a petition in the office of the circuit court against the mortgagor and the actual tenants or occupiers of such real estate, or persons in possession of personal property, setting forth the substance of the mortgage deed, and praying that judgment may be rendered for the debt or damages, and that the equity of redemption may be foreclosed, and the mortgaged property sold to satisfy the amount due."

The above section does not include chattel mortgages where the amount involved is less than one hundred dollars. The procedure for the foreclosure of chattel mortgages where the amount does not exceed one hundred dollars is set out in Section 3074, R. S. Mo. 1929, which reads as follows:

"In all mortgages in which personal estate alone is conveyed, and the debt secured thereby, exclusive of interest, shall not exceed one hundred dollars, the mortgagee or his personal representatives, upon default being made in the payment of the mortgage debt by the mortgagor or his legal representatives, may sell the mortgaged property or so much thereof as will satisfy his debt, giving the mortgagor, after default in the payment of the debt, sixty days' previous notice, in writing, that the mortgaged property will be sold, unless the debt secured by it is paid, and

giving thirty days' notice of the time and place of sale; the notice to be published in the same manner as a sheriff's notice of the sale of real estate."

Where the power of sale is included in the chattel mortgage and where the amount of the loan may be any amount of money, the procedure of foreclosure is governed by Section 3075, R. S. Mo. 1929, which reads as follows:

"All mortgages of real or personal property, or both, with powers of sale in the mortgagee, and all sales made by such mortgagee or his personal representatives, in pursuance of the provisions of such mortgages, shall be valid and binding by the laws of this state upon the mortgagors, and all persons claiming under them, and shall forever foreclose all right and equity of redemption of the property so sold: Provided, that nothing herein shall be construed to affect in any way the rights of a tenant to the growing and unharvested crops on lands foreclosed as aforesaid, to the extent of the interest of such tenant under the terms of contract or lease between such tenant and the said mortgagor or his personal representatives."

According to the copy of the standard form of chattel mortgage attached to your request, the procedure of foreclosure is therein set out and also the method of private or public sale upon the default of the debt secured by the mortgage. This mortgage is the standard form used by most finance companies. The part referred to in the standard chattel mortgage blank is as follows:

"If the mortgagor shall make default in the payment of any installment of said note, or commit a breach of any of the covenants or agreements hereof, or if said mortgagee, its regular repre-

sentatives, successors, or assigns shall deem said mortgage, or said chattel, or said debt, or said security, unsafe or insecure, then and in that event the mortgagee, its regular representatives, successors, or assigns shall be immediately and forthwith entitled to the possession of the personal property hereinbefore described, and may immediately take possession of the same, with or without notice or demand, notice and demand being expressly waived.

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"Said mortgagee is hereby authorized to enter upon the premises where said property may be found without liability for trespass in so entering, and remove and sell the same, either at public auction or private sale in such manner and at such time and place as the mortgagee, or assigns, shall deem best, without demand for performance, or notice of sale, and the mortgaged property may be sold without being physically present at said sale, said demand and notice and the presence of said property at the place of sale being hereby expressly waived, and out of the proceeds of said sale, pay the cost of foreclosing this mortgage, and the expense of pursuing, taking, keeping, and selling said goods and chattels including the attorney's fee provided for in the note hereinbefore described, and apply the residue therefrom toward the payment of said indebtedness or any unpaid part thereof in such manner as said mortgagee may elect, rendering the surplus, if any, unto said mortgagor upon demand, and said mortgagee may purchase at any such sale in the same manner and to the same effect as any person not interested therein."

Under this authority granted in the above standard chattel mortgage, the mortgagee may enter upon the private premises of the mortgagor and repossess the automobile in any manner and sell the same. It is customary for finance companies, when they loan money on an automobile and take a chattel mortgage, to require a blank assignment of the certificate of title for the reason that the chattel mortgage in itself is the same as a sale from the mortgagor to the mortgagee, which will become final upon the default of any payments, etc., or may become void upon the payment of the debt set out in the chattel mortgage.

According to Day v. National Bond & Investment Co., 99 S. W. (2d) 117, 1. c. 118 and 120, the court said:

"It being conceded that the defendant, at the time it took the automobile from plaintiff, held a valid subsisting mortgage lien on the automobile, and that plaintiff, at the time, was in default, having failed to make payment provided for in said note and chattel mortgage, the defendant as mortgagee was entitled to possession of the automobile. The recognized rule is that after condition broken the mortgagee of personal property, at least for the purpose of possession and due foreclosure, is regarded as the absolute owner. Lange v. Midwest Motor Securities Co. (Mo. App.) 231 S. W. 272; Meyer Bros. Drug Co. v. Self, 77 Mo. App. 284; Robinson v. Campbell, 8 Mo. 365. As was pointed out in the case of Meyer Bros. Drug Co. v. Self, supra, 'the mortgagee does not need the consent of the mortgagor to take possession after condition broken. He can take possession as he may. He can replevin the property. He may take it wherever he finds it. It is his property.'

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"We concur in the rule as quoted by plaintiff, respondent, in his brief, as follows: 'It is well settled that, after condition broken, the legal title to mortgage chattels vests in the mortgagee. The right of the mortgagee to seize mortgaged chattels after condition broken is a license coupled with an interest, which cannot be revoked by the mortgagor. It is a part of the consideration of the mortgage, and to allow the mortgagor to revoke it would be a fraud upon the rights of the mortgagee, and would very much impair the value of chattel mortgages as securities. The right to seize carries with it by necessary implication the right to do whatever is reasonably necessary to make the seizure, including the right to peaceably enter upon the premises of the mortgagor. There is one restriction, however, which the law imposes upon this right. It must be exercised without provoking a breach of the peace.' Willis v. Whittle, 82 S. C. 500, 64 S. E. 410, cited with approval in Lange v. Midwest Motor Securities Co. (Mo. App.) 231 S. W. 272, loc. cit. 274."

#### CONCLUSION

In view of the foregoing, it is the opinion of this department that the finance company has the right under the chattel mortgage, as set out in the standard form attached to your request, to summarily take possession under the terms of this chattel mortgage of a properly registered motor vehicle, the owner of which has been issued a Missouri certificate of title. Under no circumstances can the mortgagee take possession of a properly registered motor vehicle under the terms of a chattel mortgage which

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provides for power of sale where the mortgagee in re-possessing would be compelled to provoke a breach of the peace. In that case it would be necessary to file a court proceeding, which is usually a replevin suit.

Respectfully submitted

W. J. BURKE  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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