

RECORDER OF DEEDS: Recorder should not release a mortgage or deed of trust when a copy of the original note is used.

December 8, 1938



Honorable John E. Short
Recorder of Deeds
Richmond, Missouri

Dear Sir:

We have your letter of December 6, 1938, which reads as follows:

"Would appreciate it very much if you will please advise me, whether or not the copy of the note enclosed is sufficient to make a proper release.

"I am advised that it is but according to the Laws of Missouri, 1935, Section 3099, Page 209, it seems to me that is not sufficient. As I understand copies could be made of notes and signatures added and presented for release, and not be the original note but according to said Section 3099, it would be hard to misrepresent a release even tho the note or mortgage was not identified."

Your request does not state if the note enclosed in your letter is secured by real estate or personal property.

I.

If the note is secured by a mortgage or deed of trust on chattels or personal property, this opinion will be based on the following authorities:

Section 3099, Laws of Missouri, 1935, page 209, reads as follows:

"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 mortgagers 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."

Section 3099, Laws of Missouri, 1935, page 209, is an amendment of Section 3099, R. S. Mo. 1929. The amendment is a verbatim copy of Section 3099 with the exception of the insertion of the words "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," instead of the words "of ten cents."

Section 3099 is a part of Article 3, Chapter 22, of the Revised Statutes of Missouri, 1929, and only applies to mortgages or deeds of trust on personal property. The first section, 3097, of Article 3, Chapter 22 begins as follows: "No mortgage or deed of trust of personal property." Section 3099, Laws of 1935, page 209, only applies to personal property and the mortgages and deeds of trust described in said article are secured only by personal property.

In arriving at the original intention of the Legislature in enacting any law, one must read all sections in reference to the same subject matter and as set out in the same article. In the case of *State ex rel. Geo. B. Peck Co. v. Brown*, 105 S. W. 909, 1. c. 911, 340 Mo. 1189, the court said:

"In construing statutes in *pari materia*, endeavor should be made, by tracing history of legislation on the subject, to ascertain the uniform and consistent purpose of the Legislature or to discover how the policy of the Legislature with reference to the subject matter has been changed or modified from time to time. With this purpose in view therefore it is proper to consider, not only

acts passed at the same session of the Legislature, but also acts passed at prior and subsequent sessions, and even those which have been repealed. So far as reasonably possible the statutes, although seemingly in conflict with each other, should be harmonized, and force and effect given to each, as it will not be presumed that the Legislature, in the enactment of a subsequent statute, intended to repeal an earlier one, unless it has done so in express terms, nor will it be presumed that the Legislature intended to leave on the statute books two contradictory enactments.' 16 Cyc. 1147. We approved the above excerpt in State ex rel. Columbia National Bank v. Davis, 314 Mo. 373, 284 S. W. 464."

The only change made in the enactment of the new Section 3099, Laws of 1935, was the cost of filing such instrument, and is still a part of Article 3 which prescribes the method of filing and satisfying chattel mortgages. It will also be further noticed in Section 3099, Laws of 1935, that the Legislature does not mention recording, but only the filing of a mortgage. There is no procedure to file a mortgage of real estate without recording. Section 3099, Laws of 1935, in describing how a chattel mortgage shall be released, does not mention the note, but only the mortgage in all three of the methods described.

In case of a conflict as to the title of chattels between the holder of a note and the holder of the chattel mortgage to secure payment of the note, the mortgage controls. In the case of International Harvester Co. v. Threlkeld, 44 S. W. (2d) 182, 1. c. 184, 226 Mo. App. 600, the court said:

" * * * but the mere use of such notes in the chattel mortgage ought not to contravene or control the express terms of such mortgage or the legal implication arising from the subsequent giving and taking thereof."

CONCLUSION

In view of the above authorities, it is the opinion of this department that the only methods to release and satisfy a chattel mortgage are: (1) The mortgagee, cestui que trust, his agent or assigns, may satisfy the mortgage on the margin of the index, which shall be attested by the recorder; (2) the mortgage may be satisfied by the mortgagor or grantor of the original mortgage or deed of trust, who shall make an 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; or (3) the mortgage may be satisfied upon the 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. The three methods above set out are the only ways in which a mortgage or deed of trust upon personal property can be satisfied.

II.

If the note is secured by a mortgage or deed of trust on real estate, this opinion will be based on the following authorities.

I am assuming from your request for an opinion that the release and satisfaction is being attempted with a copy of an unidentified note and the original note has not been presented at the time of the release and satisfaction.

Section 3078, R. S. Mo. 1929, was amended by the Laws of Missouri, 1933, page 196, which enacted Section 3078, which partially reads as follows:

"In case satisfaction be acknowledged by the payee or assignee, or in case a full deed of release is offered for record, the note or notes secured shall be produced and canceled in the presence of the recorder,

who shall enter that fact on the margin of the record and attest the same with his official signature; and no full deed of release shall be admitted to record unless the note or notes are so produced and canceled, and that fact entered on the margin of the record and attested as above provided. If such note or notes are not presented for cancellation for the alleged reason that they have been lost or destroyed, the recorder, before allowing any entry of satisfaction to be made on the record or any deed of release to be placed on the file or record, shall require the cestui que trust named in the mortgage or deed of trust desired to be released or his legal representatives, to make oath, in writing, stating that the note or other evidence of debt named in the mortgage or deed of trust sought to be released have been paid and delivered to the maker thereof or his representative, and the recorder shall also require the maker of such note or notes, or his legal representative, to make affidavit, in writing, that the note or notes in question have been paid, and cannot be produced because lost or destroyed, and that they are not then in the possession of any person having any lawful claim to the same; provided, however, that, if such note or notes shall not have been delivered to the maker or his legal representative, the affidavit so required of the cestui que trust or his legal representative shall recite that the note or other evidence of the debt named in said mortgage or deed of trust has been paid and cannot be produced because lost or destroyed, and that they are not then in the possession of any person having any lawful claim to the same, and the term legal representatives as used in this section shall include assigns; and the affidavit of the maker of such note or notes or his legal representative shall recite that said note or notes have been paid; the affidavits so required shall be recorded in the same manner as deeds, in a permanent record, and the recorder shall make a notation upon

the margin of the mortgage so satisfied giving the number of the book and page wherein said affidavit has been recorded.

* * *

Under this section, a mortgage or deed of trust can only be satisfied by the mortgagee, cestui que trust or assignee either satisfying the record or filing for record a deed of release. In case of satisfaction acknowledged by the payee or assignee, or in case of a full deed of release being offered for record, the note or notes must be produced and cancelled in the presence of the recorder, who shall record same on the margin of the record and attest it with his signature. Where the note is lost or destroyed, the law does not provide that a copy of the note can be resigned by the makers and the note released by the mortgagee on the copy. In some cases this has been done, but if known by the recorder and the original note should later appear in the hands of a purchaser in due course, the recorder would be liable on his bond for releasing the mortgage if it could be shown that he knew that the note used was not the original note secured by the mortgage, but was a copy made for the purpose of satisfying the record. When the note is lost or destroyed, the recorder should require the cestui que trust named in the mortgage or deed of trust desired to be released, or his legal representatives, to make oath, in writing, stating that the note or other evidences of debt named in the mortgage or deed of trust sought to be released has been paid and delivered to the maker thereof, or his legal representative, and at the same time the recorder shall also require the maker of such note or notes, or his legal representative, to make affidavit, in writing, that the note or notes in question have been paid and can not be produced because lost or destroyed, and that they are not then in the possession of any person having any lawful claim to the same. It further provides that if such note or notes have not been delivered to the maker, or his legal representative, the affidavit so required of the cestui que trust, or his legal representative, shall recite that the note or other evidence of the debt named in the mortgage or deed of trust has been paid and can not be produced because lost or destroyed, and that they are not then in the possession of any person having any lawful claim to the same. The affidavits

above set out shall be recorded the same as any other instruments. The methods of releasing deeds of trust and mortgages upon real estate as above set out are the only methods of releasing where the original note is not obtainable.

If a chattel mortgage is filed and recorded in the same manner that a real estate mortgage is filed and recorded, then the chattel mortgage can be released in the same manner as a real estate mortgage as above set out.

CONCLUSION

In view of the above authorities, it is the opinion of this department that the copy of the note enclosed in your request is not sufficient to make a proper release of a mortgage or deed of trust either upon real estate or personal property.

Respectfully submitted

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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