

RECORDERS OF DEEDS:
PUBLIC RECORDS -
INSPECTION BY PUBLIC:

Any person may inspect the records in the office of recorder of deeds and make a memorandum or copy thereof, subject to reasonable rules and regulations made by the recorder.

September 26, 1938

Honorable Harold V. Walker
Circuit Clerk and Recorder
Fayette, Missouri

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Dear Sir:

This is in reply to yours of recent date wherein you request an official opinion from this department based upon the following statement:

- "(1) Is it compulsory that I show all the chattels each week to a person making an abstract of chattels to sell the public?
- (2) This same person makes a list of all land transfers and they are published in the paper each week. I have had lots of complaints from the owners of the property and have people ask me to not publish the transfers. What can be done to prevent this?"

By the various statutes of the state, different instruments affecting title to real estate and to personal property are required to be filed and/or recorded in the office of the recorder of deeds of the various counties. By statute, the recorder is the custodian of such records, and he is required to give a bond for the safekeeping of them and turning them over to his successor. The intention of the lawmakers in this respect is evidenced by Section 11527, R. S. Mo. 1929, which is as follows:

"The recorder shall keep his office at the seat of justice, and the county court shall provide the same with suit-

able books, in which the recorder shall record all instruments of writing authorized and required to be recorded. If there is no courthouse or other suitable county building at the seat of justice, the county court shall provide an office for the recorder at any other place in the county where there is a courthouse and courts of record are held."

Section 11529, Laws of Missouri, 1933, page 360, reads as follows:

"Every clerk, before entering upon the duties of his office as recorder, shall enter into bond to the state, in a sum not less than one thousand dollars (\$1000) nor more than five thousand dollars (\$5000) at the discretion of the county court, with sufficient sureties, to be approved by said court, conditioned for the faithful performance of the duties enjoined on him by law as recorder, and for the delivering up of the records, books, papers, writings, seals, furniture and apparatus belonging to the office, whole, safe and undefaced, to his successor."

In Vol. 53 C. J., page 622, Section 38, the rule as to a public official being custodian of the books in his office is stated as follows:

"A public officer, by virtue of his office, is the legal custodian of all papers, books, and records pertaining to his office, and is responsible for their safekeeping and protection against alteration, injury, or mutilation. Correlative with that duty is his right to exercise a reasonable discretion in the care, management, and control of such records and their preservation."

In our research for some law on the duty of the recorder in respect to your question, we find that no law has been enacted pertaining to same except Section 3097, R. S. Mo. 1929, which relates to chattel mortgages. This section is 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; * * *."

It will be noted that by this section, chattel mortgages on file in the office of the recorder of deeds may be inspected by all persons.

In our research of the case law on this question, we find that it has not been before the Missouri courts and the cases cited from other states are ruled upon by the construction of some statute of that state applicable to the question. However, from the authorities we have found we find some general principles which we think are applicable to your question regardless of the absence of a statute relating to the subject.

The same rule as to inspection of the records generally applies to chattel mortgages. In Vol. 80 A. L. R., page 766, the rule is stated as follows:

"Where, by virtue of statute or otherwise, constructive notice is imparted by instruments which have been filed for record, to the same extent as instruments actually on record, it would seem that such instruments should stand upon the same footing with respect to inspection and copying by abstractors as ordinary records."

As to who may inspect the public records, in Vol. 80 A. L. R., page 770, a Kansas court opinion is quoted as follows:

"For instance, it might be decided or admitted that in all cases where a person wishes to examine the records of a public office, whatever that office may be, whether the register's office, the district clerk's office, or any other office, unless he has a present and existing interest of a pecuniary character in the information to be obtained from such records, he has no right of action of any kind, mandamus, injunction, for damages, or other action, although the officer in charge may utterly refuse to let him even see the records. And it may also be admitted that no person has any absolute right to examine the records except during office hours,

and during a time when the records are not in the rightful or proper use of any other person. The refusal of the officer in charge to permit a person to gratify a more idle curiosity, or to examine the records for the mere purpose of taking copies or memoranda thereof for some supposed possible use in the future, or to examine the records when they are otherwise rightfully and properly in use by some other person, cannot constitute a basis for any kind of action. Some present and existing right of a person must be infringed to the injury of such person, before any cause of action of any kind can accrue in his favor."

On the question of the purpose for which any person may examine a public record, the case of *Burton v. Tuite*, 44 N. W. 282, is quoted in Vol. 80 A. L. R., page 771-2, as follows:

"In discussing the general right of abstractors to examine public records, the court said: 'I do not think that any common law ever obtained in this free government that would deny to the people thereof the right of free access to and public inspection of public records. They have an interest always in such records, and I know of no law, written or unwritten, that provides that, before an inspection or examination of a public record is made, the citizen who wishes to make it must show some special interest in such record. I have a right, if I see fit, to examine the title of my neighbor's property, whether or not I have any interest in it, or intend ever to have. I also have the right to examine any title that I see fit, recorded in the public offices, for purposes of selling such information, if I desire. No one has ever disputed the right of a lawyer to enter the register's office and examine the title of his client to land as recorded,

or the title of the opponent of his client, and to charge his client for the information so obtained. This is done for private gain, as a part of the lawyer's daily business, and by means of which, with other labors, he earns his bread. Upon what different footing can an abstracter--can Mr. Burton--be placed, within the law, without giving a privilege to one man or class of men that is denied to another? The relator's business is that of making abstracts of title, and furnishing the same to those wanting them, for a compensation. In such a business it is necessary for him to consult and make memoranda of the contents of these books. His business is a lawful one, the same as is the lawyer's, and why has he not the right to inspect and examine public records in his business as well as any other person? If he is shut out because he uses his information for private gain, how will it be with the dealer in real estate, who examines the records before he buys or sells, and buys and sells for private gain? Any holding that shuts out Mr. Burton from the inspection of these records, for this reason also shuts out every other person except the buyer, seller, or holder of a particular lot of lands, or one having a lien upon it, or an agent of one of them, acting as such agent without fee or reward. It cannot be inferred that the legislature intended that this statute should apply only to a particular class of persons, as, for instance, those only who are interested in a particular piece of land; any person means all persons."

The recorder has a right to prescribe reasonable rules and regulations as to the time and manner in which the records of his office may be inspected. In the case of *Upton v. Catlin*, 17 Colo. 546, that court is quoted in 80 A. L. R., page 778, as follows:

"It requires no argument to show that, by reason of this responsibility, a wide discretion must necessarily be vested in the clerk with reference to permitting the examination of the records of his office by those other than employees thereof. The liability of having the records mutilated, changed, or obliterated is always present when strangers are about the office; and while it is necessary, perhaps, that abstracters should be allowed to examine and make copies from these records, they must in so doing be subjected to such reasonable regulations as the county clerk may prescribe. It is to be remembered that the officer receives no compensation or extra fee for this work."

Under the Missouri statute, no fees are allowed the recorder for exhibiting the records of his office to any person.

Under the common law rule, only persons interested in the particular record were permitted to inspect the record. As to what constitutes an interest, the courts differ. However, your question deals primarily with chattel mortgages and we have a special statute governing them, which statute has been heretofore cited.

In the case of *Tobin v. Knaggs*, 107 S. W. 677, 1. c. 680, in construing who was entitled to copy records by authority of a statute which permitted any citizen to inspect and copy the records, the Civil Court of Appeals of Texas said:

"Nor does the statute restrict the right to copy records to citizens having a particular, or specific, or personal interest in the records to be copied, or any particular purpose to serve. It is objected by appellee that appellant's interest in making copies is to commercialize the same, through the making of abstracts of title, and the like. The same may be said of those making typewritten copies for like pur-

poses, and who, according to the record, are freely permitted by appellee to exercise the right. The law would not sanction the discrimination that would result from appellee's proposed course. The plain and obvious purpose and effect of the statute is to give the right, alike to every citizen, to make copies of the records in the clerk's office, and the clerks have no discretion or power to deny that right to any citizen who agrees, as has appellant in this case, to observe all reasonable rules and regulations imposed in good faith by the clerks upon those demanding the right."

You state in your request that some of the parties desiring to inspect the records are making copies or memoranda thereof. On this question, we find the rule stated in Vol. 53 C. J., at page 625, as follows:

"A statute which provides for inspection of public records grants the right to inspect with all of its common-law incidents, including the right to make copies. The right to copy has been held a necessary incident of the right to inspect granted by the statute. Thus the right to inspect under the statutes includes the right to make memoranda or copies."

CONCLUSION

From the foregoing authorities, we are of the opinion that any person may inspect the records of chattel mortgages and of any other conveyances on record in the office of the recorder of deeds, and may make copies or memoranda thereof, subject, however, to reasonable rules and regulations that the recorder may make as to the time and manner of such inspection.

Respectfully submitted

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APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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