

CHATTEL MORTGAGES:
MOTOR VEHICLES:

The provisions of Section 3097a, House Bill No. 546 of the Sixtieth General Assembly do not apply to mortgages given to manufacturers and dealers.

September 1, 1939

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Mr. Roy Coyne
Prosecuting Attorney
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Dear Sir:

This is in reply to yours of recent date wherein you request an opinion based on the following letter:

"The last Legislature passed House Bill No. 546, which was an act to amend Article 3, Chapter 22, relating to chattel mortgages, by adding a new section to said article to be known as Section 3097a.

"This section provides for certifying by the recorder on the certificate of title of a motor vehicle as to the filing and release of a chattel, stating that it does not apply to chattel mortgages given to secure the purchase price or any part thereof, etc.

"Certain individuals request the dealer to omit from the application for certificate the fact that there is a mortgage on the car. The question then arises under this new section as to whether it would be necessary for the recorder to stamp on the title that there is a mortgage on the car. Would the fact that the dealer should omit this fact from the application for title, merely file the chattel with

the recorder, and where no notation shows on the title by either the Secretary of State or the Recorder, be sufficient compliance with Section 3097a as to making a binding chattel mortgage on the property?

The new section to which you refer as 3097a was House Bill No. 546 passed by the Sixtieth General Assembly, and is as follows:

"It shall be the duty of the recorder of deeds, on request of the mortgagee, or his assignee, to certify on the certificate of title to the mortgaged motor vehicle, that such chattel mortgage has been filed showing the date, the amount of the mortgage and the name of the payee. When such chattel mortgage is released it shall be the duty of the recorder to so show on the certificate of title. For services herein provided the recorder shall receive a fee of twenty cents (20Cts.). A mortgage on a motor vehicle shall not be notice to the whole world, unless the record thereof is noted on the certificate of title to the mortgaged motor vehicle, as herein provided. Provided, however, that the provisions of this section shall not apply to chattel mortgages given to secure the purchase price of a motor vehicle sold by the manufacturer or their distributing dealers, or to a chattel mortgage given by dealers to secure loans on the floor plan stock of motor vehicles."

From a reading of this new act it seems that the only purpose that the lawmakers had in mind was to impart notice of a mortgage on a motor vehicle by having the same shown on the certificate of title to the motor vehicle. The

first nine lines of the act, that is, that part of the act which ends with the words "twenty cents (20Cts.)" sets out the procedure for getting the record of the mortgage placed on the certificate of title.

The next sentence of the bill contains the purpose of the act which is a manner in which the notice of the mortgage is given to the whole world.

The last sentence of this section which contains the proviso, excludes from the act the manufacturer, or the distributing dealers or the mortgage given to dealers to secure loans on the floor plan stock of motor vehicles.

Section 3097, R. S. Missouri, 1929, is the law under which chattel mortgages are given and filed on motor vehicles and other chattels. The last clause of Section 3097, supra, applies somewhat to the same subject that 3097a of the new bill applies. That part of Section 3097, supra, to which we refer is as follows:

"* * * * 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."

Since the mortgage given to secure the purchase price of a motor vehicle sold by the manufacturers or their distributing dealers is excluded from the provisions of said Section 3097a, then the foregoing provisions of said Section 3097 are still in full force and effect as to the mortgages given to secure the purchase price of the motor vehicle sold by the manufacturers or their distributing dealers. The language of the last proviso of said Section 3097a of the new act is plain and unambiguous. There is no doubt that the lawmakers have excluded from the act the chattel mortgage given to secure the purchase price of the motor vehicle which is sold by the manufacturers or their distributing dealers.

While the proviso clause of the new act excludes from it the mortgages given to secure the purchase price of the motor vehicle sold by the manufacturers or the distributing dealers, yet we think that the lawmakers intended that such transactions were excluded from the provisions of the act which are as follows:

"* * * A mortgage on a motor vehicle shall not be notice to the whole world, unless the record thereof is noted on the certificate of title to the mortgaged motor vehicle, as herein provided. * * * * *"

It seems that under the first sentence of the new act that it would be the duty of the recorder of deeds, on the request of the mortgagee or his assignee, to place this certificate on the title providing the proper fee is paid therefor.

The new act does not indicate why this proviso was placed in it, but by a reading of sub-section (c) of Section 7774, R. S. Missouri, 1929, we can see some reason for this proviso. This subsection requires the applicant for a certificate of title to state whether or not a lien is on the motor vehicle for which the title is sought. It also requires the Secretary of State to note this information on the certificate of title when he issues it. Said sub-section (c) of Section 7774, in so far as it applies to liens on motor vehicles, provides as follows:

"* * * * * Application shall be made upon a blank form furnished by the commissioner and shall contain a full description of the motor vehicle or trailer, manufacturer's or other identifying number, together with a statement of the applicant's source of title and of any liens or encumbrances on the motor vehicle or trailer. The commissioner shall use reasonable diligence in ascertaining whether the facts stated in such application are true, and, if satisfied

that the applicant is the lawful owner of such motor vehicle or trailer, or otherwise entitled to have the same registered in his name, shall thereupon issue an appropriate certificate over his signature and sealed with the seal of his office, procured and used for such purpose. The certificate shall contain a description, manufacturer's or other identifying number, and other evidences of identification of the motor vehicle or trailer, as the commissioner may deem necessary, together with a statement of any liens or encumbrances which the application may show to be thereon. * * * * *

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In the event of a sale or transfer of ownership of a motor vehicle or trailer for which a certificate of ownership has been issued the holder of such certificate shall endorse on the same an assignment thereof, with warranty of title in form printed thereon, and prescribed by the commissioner, with a statement of all liens or encumbrances on said motor vehicle or trailer, and deliver the same to the buyer at the time of the delivery to him of said motor vehicle or trailer. * * * * *

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Since this information is on the title providing all parties following the foregoing statute, there would be no necessity in having it again placed on there by the recorder as provided by the new act and this is the only reason that we can see why the proviso was placed in the new act.

You state in your letter that certain individuals request the dealers to omit from the application the fact that there is a mortgage on the motor vehicle. We do not think that the provisions of said Section 7774 quoted above would authorize such omission. As stated

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above, since the mortgage on the cars sold by the manufacturers and distributing dealers are exempt from the act, then said Section 3097, R. S. Missouri, 1929, only applies to such mortgages.

CONCLUSION.

From the foregoing it is the opinion of this department that the provisions of said Section 3097a, which provide that: "A mortgage on a motor vehicle shall not be a notice to the whole world unless the record thereof is noted on the certificate of title to the mortgaged motor vehicle," do not apply to chattel mortgages which are given to secure the purchase price of motor vehicles sold by the manufacturers or their distributing dealers or to chattel mortgages given by dealers to secure loans on a floor plan stock of motor vehicles; and in such cases of original purchase if such dealer fails to place on the application for the certificate of title that there is a mortgage on the motor vehicle, or where no notation shows on the title by either the Secretary of State or the recorder of deeds, the chattel mortgage would be binding on the property described therein since Section 3097a does not apply to such cases.

Respectfully submitted

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APPROVED:

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