

RECORDER OF DEED:

Certificate of title must be produced,  
and fact of mortgage noted thereon be  
satisfied to satisfy mortgage on motor  
vehicle.

May 1, 1943



Mr. R. S. Rodgers  
Clerk of the Circuit Court  
Howell County  
West Plains, Missouri

Dear Mr. Rodgers:

This will acknowledge receipt of your letter of April  
21, 1943, which is as follows:

"Section 3488, Revised Statutes 1939, re-  
lative to showing chattel mortgage on  
certificate of title.

"As to release of chattel the section is  
as follows, 'When such chattel mortgage  
is released it shall be the duty of the  
recorder to so show on the certificate of  
title.' I have held that at the time  
the note is presented for release of chat-  
tel mortgage, the title certificate shall  
be presented and we show release by pla-  
cing the cancelling stamp across the show-  
ing of the chattel mortgage on the face of  
the title.

"The question has arisen.

"A trucking company secured a  
loan from one of the Banks and  
secured the loan by giving a  
chattel mortgage on the trucks  
belonging to the company and  
certified the chattel mortgage  
on eighteen (18) title certifi-  
cates. The manager of the

trucking company has been very prompt about releasing chattel mortgages as soon as they are paid, so I called his attention to Section 3488 and told him as I understood the law he would have to present the eighteen titles at the same time he released the chattel mortgage. He did not agree with me and said he could make the releases at any time."

Section 3488 Mo. R. S. A., 1939, provides:

"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. \* \* \* \* \* 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.\* \* \* \* \*"

Section 3488, supra, has a complementary provision in Section 8382 Mo. R. S. A., 1939, requiring every per-

son at the time he sells a motor vehicle to endorse on the title certificate a statement of all liens and encumbrances on the vehicle, but said provisions have nothing to do with the instant question.

Two things are to be noticed in Section 3488. First, the recorder is under no duty to certify the fact of the mortgage on the certificate of title unless requested to do so by the mortgagee; and second, unless the fact of the mortgage is certified on the title certificate, the mortgagee, in the event the vehicle is sold, has no enforceable lien on the motor vehicle as against a bona fide purchaser for value without notice of the lien. These provisions, in legal effect, correspond with the requirements on mortgages on property other than motor vehicles, which do not have to be filed with the recorder unless the mortgagee desires to do so, and if not filed, the mortgagee, in the event the property is sold, has no enforceable lien on the property as against a bona fide purchaser for value without notice of the lien.

The purpose of filing chattel mortgages is not to give the mortgagee a lien on the property as against the mortgagor, but to impart to the world notice of such lien, so that in the event the mortgagor should sell the property mortgaged without the consent of the mortgagee, then the mortgagee is protected and may pursue the property and have it sold to satisfy the debt of the mortgagor. Section 3486 Mo. R. S. A., 1939.

This view clearly shows that, in the case of a mortgage on a motor vehicle, it is the certification of the fact of the mortgage on the certificate of title, that is intended to prevent the lien of the mortgagee from being defeated by a sale rather than the filing of the mortgage with the recorder. This is because Section 3488 makes such certification constitute notice to the world of such

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lien rather than the filing of the mortgage.

The purpose of satisfying chattel mortgages is to clear the record, in so far as notice to the world is concerned, as to the lien of the property mortgaged. In other words, filing of a mortgage on property, other than a motor vehicle, notifies the world of such lien, and satisfying the record withdraws such notice. Section 3489 Mo. R. S. A., 1939.

Therefore, such being the purpose of satisfying the record, it follows that satisfactions, in the case of a mortgage on a motor vehicle, requires that the record which imparts notice to the world of the lien, be the record satisfied. This record is the certification of the fact of the mortgage upon the certificate of title.

#### CONCLUSION

It is, therefore, our opinion that in satisfying the record of a mortgage on a motor vehicle, the recorder should require the certificate of title to be produced in order that the fact of the mortgage noted thereon, if such was noted thereon at the request of the mortgagee, may be satisfied.

In speaking of mortgages on motor vehicles in this opinion, it is understood, of course, that we are not dealing with the mortgages on motor vehicles excluded from the terms of Section 3488.

Respectfully submitted,

APPROVED:

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Assistant Attorney-General

ROY McKITTRICK  
Attorney-General

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