

MOTOR VEHICLES:

Section 3097A only applies to filing of chattel mortgages and not recording, and is directory and not mandatory that the mortgagee or assignee shall have the certificate of title stamped or sealed.

9/18
September 1, 1939



Mr. John P. English
Recorder of Deeds
City of St. Louis
St. Louis, Missouri

Dear Sir:

We are in receipt of your request for an opinion under date of August 30th, 1939, which reads as follows:

"In reference to House Bill No. 546:

'To amend Article 3, Chapter 22, Revised Statutes of Missouri, 1929, relating to chattel mortgages, by adding a new section to said article, to be known as Section 3097A, providing for the proper certification and release of chattel mortgage, by the recorder of deeds, on the certificate of title to the mortgaged motor vehicle, establishing a fee for such service, providing certain exemptions, and declaring that the General Assembly determines this Act to be a Revision Act, within the meaning of Section 41, Article IV of the Constitution of Missouri.'

"We wish to be advised as to whether we can make it mandatory to present the certificate of title to automobiles for certification by the Recorder as to mortgages filed, and as to what effect the law would have on chattel mortgages recorded, or whether it should be optional on behalf of the mortgagee or his assignee in each case.

"Also advise us as to what form of stamp to use or if we should use our own judgment."

Section 3097 R. S. Missouri, 1929, reads 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; and such mortgage or deed of trust, or copy thereof, may be so filed, although not acknowledged, and shall be as valid as though the instrument were fully spread upon the records of the county, or, in case of the city of St. Louis, upon the records of said city, in the office of the recorder of deeds; 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."

It will be noticed under this section that if chattel mortgage is filed, according to this section, that it shall henceforth be notice of the contents thereof to all of the world. House Bill No. 546, which is designated as Section 3097A, reads 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."

This section, which is a new section to Article 3, Chapter 22, does not mention 3097, supra. There is a conflicting clause in House Bill No. 546, which reads 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."

This is a direct conflict as set out in Section 3097, supra. Under the rule of conflicting statutes, which cannot be read together, in order to set out the intention of the legislature, and where the conflict is directly set out, the latter section of the statute, or act, is the governing law.

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In the case of *Stiers v. Vrooman*, 115 S. W. 2d 84, l. c. 88, par. 10, the court said:

"We appreciate the rule of statutory construction that in the case of irreconcilable conflict between two different parts of the same act, the last in order of position will control 'unless there is some special reason for holding to the contrary.' *State ex rel. v. Gideon*, 273 Mo. 79, 199 S. W. 948, 949. However, as is aptly said in 59 C. J. 1000, this rule is purely artificial and arbitrary, and is to be resorted to only where there is clearly an irreconcilable conflict, and all other means of interpretation have been exhausted. * * * "

There is no dispute, in our opinion, that the two statutes 3097, supra, and 3097A, are conflicting in this respect. As to the intention of the legislature in passing House Bill No. 546, they could have said that they were repealing Section 3097, but they made the provision about the notice to the whole world, which is in conflict with 3097. Under 3097A and under 3097, a chattel mortgage on an automobile, which is secured by a certificate of title, which, when lawfully filed, is not notice to the world unless a stamp or seal of the recorder of deeds is attached to the certificate of title. But the chattel mortgage in itself will be notice to the mortgagor or to anyone who could be shown had notice of said mortgage.

In your request you ask if Section 3097A, House Bill No. 546, is mandatory, in regard to the stamping or sealing of the certificate of title secured by the chattel mortgage.

It will be noticed that under Section 3097A it is stated "on request of the mortgagee or his assignee." This section should be considered as a permissive statute, and not a mandatory, but includes a directory statute.

In the case of State v. City of Maplewood, 99 S. W. 2d, 138, l. c. 142, par. 5-7, 231 Mo. App. 739, the court said:

"The general rule with respect to the use of permissive words in a statute is stated in 59 C. J. section 633, pp. 1077 and 1078, as follows:

'On the other hand, where statutes are purely enabling in character, simply making that legal and possible which otherwise there would be no authority to do, and no public interests in private rights are involved, they will be construed as permissive. Generally, statutes, directing the mode of proceeding by public officers, designed to promote method, system, uniformity, and dispatch in such proceeding, will be regarded as directory if a disregard thereof will not injure the rights of parties, and the statute does not declare what result shall follow non-compliance therewith. * * *

"Permissive words in a statute in respect of officers or courts will not be construed as mandatory where such construction would create a new public obligation; and it has been held that even mandatory words or provisions in a statute defining the duties of administrative officers may be construed as directory only, unless something in the body of the statute indicates the contrary."

Also, in the case of State v. Brown, 33 S. W. 2d 105, l. c. 107, par. 2-6, 326 Mo. 627, 25 R. C. L. par. 14, the court said:

"A mandatory provision is one the omission to follow which renders the proceeding to which it relates illegal and void, while

a directory provision is one the observance of which is not necessary to the validity of the proceeding. Directory provisions are not intended by the legislature to be disregarded, but where the consequences of not obeying them in every particular are not prescribed the courts must judicially determine them. There is no universal rule by which directory provisions in a statute may, in all circumstances, be distinguished from those which are mandatory. In the determination of this question, as of every other question of statutory construction, the prime object is to ascertain the legislative intention as disclosed by all the terms and provisions of the act in relation to the subject of legislation and the general object intended to be accomplished. Generally speaking, those provisions which do not relate to the essence of the thing to be done and as to which compliance is a matter of convenience rather than substance are directory, while the provisions which relate to the essence of the thing to be done, that is, to matters of substance, are mandatory.' 25 R. C. L. sec. 14 pp. 766, 767."

If it had been the intention to make the procedure of stamping the certificate of title on all chattel mortgages mandatory, the legislature could have said so in so many words, and not say, "It shall be the duty of the recorder of deeds on request of the mortgagee or assignee to certify on the certificate of title etc., * * *."

The new section 3097A, under its title, did not amend or repeal section 3097, supra, but only gave the right of the mortgagee, or his assignee, to have the certificate of title stamped or sealed by the recorder of deeds, so that in case the certificate of title was assigned to an innocent purchaser, the mortgagee, or his assignee, would have double security, and the purchaser of the automobile, which is represented by the certificate of title, would have double notice that there was a mortgage against the automobile.

Also, in your request you asked whether we can make it mandatory to present the certificate of title to automobiles for certification by the recorder as to mortgages filed. Under section 3097A it is specifically stated "on request of the mortgagee or his assignee." In other words, it is directory and not mandatory that the certificate of title be stamped or sealed by the recorder of deeds, when a chattel mortgage is filed.

Ordinarily, when the phrase "filed" is used in a statute it means the filing of an instrument by leaving the instrument in the office of the recorder, and does not mean the recording of the instrument. In House Bill No. 546, designated as Section 3097A, the section also says: "A mortgage on a motor vehicle shall not be notice, etc *." Taking this sentence in connection with the whole section, it shows that it is the intention of the legislature that mortgages filed and mortgages that are recorded may have the certificate of title of the vehicle stamped as to mortgages outstanding against the car. The section shows that it is the intention of the legislature to include under that section not only chattel mortgages, on automobiles, filed for record, but also chattel mortgages on automobiles filed for recording.

CONCLUSION.

In view of the above authorities it is the opinion of this department that section 3097A, House Bill No. 546, in reference to the certification of the recorder of deeds on the certificate of title on an automobile is permissive and directory and not mandatory, but on the request of the mortgagee, or his assignee, it is mandatory on the part of the recorder of deeds to so seal or stamp the certificate of title for the reason that section 3097A reads: "It shall be the duty * * *."

It is also the opinion of this department that although House Bill No. 546 does not describe the form of stamp to be used, it is necessary that the stamp should contain information showing that the mortgage has been filed, also the date, the amount of the mortgage, and the name of the payee. Under the general real estate

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law in the filing of a deed of trust or mortgage the note secured by the mortgage may be identified by means of a stamp which shows the date and the record index of the recording of the deed of trust or mortgage. I would suggest the same sort of a stamp except that it should contain the information above set out.

Respectfully submitted,

W. J. BURKE
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

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