

CHATTEL MORTGAGES: The Recorder of Deeds shall release same, when and how?

4-11

April 9, 1934.



Honorable Lawrence Holman
Prosecuting Attorney
Randolph County, Missouri
Moberly, Missouri

Dear Mr. Holman:

We are hereby acknowledging your request for an opinion dated March 21st. Your request is as follows:

"I have received a letter this morning from Charles C. Hon, our County Recorder, the contents of which, are as follows: 'I am submitting herewith for the opinion of the Attorney General of Missouri, a copy of a release submitted to me for release of a recorded chattel mortgage as to its validity, also what shall I do with the release when it is used for as I understand it this is intended to be my authority for making a marginal release. We have no place for the official filing of such records that I know of.

"I am holding the release in the meantime. It has been my custom in the past to require the cancelled note or notes. As the note carries the security I cannot understand why it should not be the basis of release * * * * *

Yours truly,

Chas. C. Hon
Recorder of Deeds.'

"From a conversation I had with Mr. Hon, I think the question he is interested in is whether or not he is protected in the event he enters satisfaction of a chattel mortgage in accordance with the methods provided for in Section 3099 Revised Statutes, 1929. This Section seems plain in providing as to the manner of releasing a chattel mortgage, but he is afraid that there is some other section

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of some other construction that might cause him trouble. His theory is, that the cancelled note should be produced when a chattel mortgage is released, because of the fact that an innocent purchaser for value of the note might lose his security when the Recorder enters the release on the strength of an affidavit such as the one I am inclosing herewith.

"Therefore at his request, I am writing this letter to get your opinion on this matter."

We also acknowledge the exhibit which was attached to your request, which is as follows:

" Release.

The Marion Steam Shovel Company, a corporation duly organized under the laws of the State of Ohio, and having its principal place of business at Marion, Marion County, Ohio, does hereby certify that it is the record holder of a certain chattel mortgage heretofore executed and delivered to it by Ray E. Antry of Moberly, Missouri; that the conditions thereof have been satisfied and the amount due thereon paid in full and the filing or recording officer of Randolph County, Huntsville, Missouri, is hereby directed to cancel and discharge the same from record, the said chattel mortgage having been filed or recorded in his office on December 28th, 1932, Book 14, Page 191, covering one Used Type 450 Gasoline Electric Revolving shovel complete, Shop Number 6358.

"In Witness Whereof the said Marion Steam Shovel Company has caused this instrument of release to be executed this 14th, day of March, 1934.

The Marion Steam Shovel Company,

by A. Gibson
Secretary-Treasurer.

April 9, 1934.

"State of Ohio ()
Marion County) ss.

"Before me, a Notary Public, in and for said county personally appeared A. Gibson, Secretary & Treasurer of the Marion Steam Shovel Company, the corporation which executed the foregoing instrument, who acknowledged that the seal affixed to said instrument is the corporate seal of said corporation; that he did sign and seal said instrument as such treasurer in behalf of said corporation and by authority of its board of directors; and that said instrument is his free act and deed individually and as such treasurer and Secretary and the free and corporate act and deed of said Marion Steam Shovel Company.

"IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal at Marion, Ohio, this 14th day of March, 1934.

Wm. G. Slack.

Notary Public, Marion County, Ohio.

My commission expires Jan. 10th, 1936."

follows: Laws of 1933, Page 360, Section 11526 provides as

"There shall be an office of recorder in each county in the state containing 20,000 inhabitants or more, to be styled, 'The office of the Recorder of Deeds.' "

Section 11527 R. S. Mo. 1929, provides as follows:

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

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office for the recorder at any other place in the county where there is a courthouse and courts of record are held."

Section 11535, R. S. Mo. 1929 provides, both before and after the amendment of 1933, page 361, that the recorder give bond "conditioned for the faithful performance of the duties of his office,". This condition in his bond places it squarely up to the recorder to only release mortgages in the manner provided by law and not otherwise. A recorder of deeds is liable personally to the party aggrieved for the damages resulting from an omission to perform a duty imposed on him by law, or for a performance of such a duty in a negligent manner, for it was said in State ex rel. v. Green, 100 S. W. 1115, 124 Mo. App. 80, 1. c. 88:

"The defendant, as a public officer, stands positively charged by the statute with the performance of his duties in a specific manner. * * * It is suggested, however, that while it is true the law presumes the due execution of official duties by a public officer, and the relator had the right to presume the defendant would do his duty, yet notwithstanding this presumption, the relator himself is presumed to know the law, as is every citizen. * * * And this being true, that he is charged with knowledge of the manner provided by the statute quoted for satisfying deeds of trust * * * P."

And in your case, all innocent purchasers for value of notes secured by chattel mortgage are presumed to know the law as it relates to the recorder's duty to satisfy chattel mortgages and that when the statutory method is complied with, the recorder's act of satisfaction is essentially ministerial.

On this same subject, Corpus Juris, Vol 53, page 1070, Section 2, states the law thus:

"Notwithstanding the performance of his duties requires, to some extent, the exercise of judgment and discretion, or that he is vested with quasi judicial powers the office of register of deeds is essentially a ministerial one."

Section 11544, R. S. Mo. 1929, provides as follows:

"The several classes of instruments of writing mentioned in the several subdivisions of the preceding section shall be recorded in separate books, according to their classification therein."

Section 11545, R. S. Mo. 1929, provides as follows:

"Instruments in writing, conveying chattels or personal property alone, which by any law of this state are required to be recorded or admitted of record in any recorder's office in this state, shall be recorded in a series of volumes separate from those used for recording conveyances of real estate."

Section 11546, R. S. Mo. 1929, provides as follows:

"The recorder of each county in this state shall keep in his office a well-bound book or books, to be known as the 'abstract and index of deeds,' which shall have appropriate columns properly ruled and headed for each of the following items, namely: Names of grantors and grantees, date of instrument, date of filing instrument for record, nature of instrument, book and page where recorded, description of land conveyed or affected; said books shall be divided into two equal parts, the front part to be alphabetically arranged for the names of grantors, and the back part to be alphabetically arranged for the names of grantees."

Section 11549, R. S. Mo. 1929, provides as follows:

"When any instrument of writing conveying or affecting real estate authorized by law to be recorded shall be filed in the recorder's office for record, the recorder shall enter the same in the names of the grantors and grantees in both parts of the abstract and index of deeds, filling each appropriate column with the several items contained in such instrument in alphabetical order, in the names of the grantors and grantees; and if the instrument be made by the sheriff,

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in the name of the sheriff, and the defendant in the execution, or of the person whose land is sold, and of the grantee; and if made by an executor or administrator, in the name of the executor or administrator, and of the testator or intestate, and of the grantee; and if by attorney, in the name of such attorney and of his constituent and of the grantee; and if by a commissioner, in the name of such commissioner, and of the person whose land is sold, and of the grantee."

It would seem that the proper interpretation of the law, required a recorder to keep a record of chattel mortgages separate from his record recording real estate, and that he index his chattel mortgages in a book or books known as the "abstract and index of deeds". It is provided that the index pages be properly ruled and headed as follows:

Names of grantors	Names of grantees	Date of instrument.	Date filed	Nature of instrument.	Where files are located	Description of Property.	Date Satisfied.
:	:	:	:	:	:	:	:
:	:	:	:	:	:	:	:
:	:	:	:	:	:	:	:

It is provided that this index shall in the same book arrange grantors' and grantees' names alphabetically.

It was said in *Emerson Brantingham Implement Co. v. Rogers* (App.) 216 S. W. 994, 1. c. 995:

"The recorder correctly recorded it in a book used to record miscellaneous conveyances affecting real-estate, and not in a separate book used to record chattel mortgages, as required by section 10383, R. S. Mo. 1909. (Now Section 11545, supra.) Nor was there any index made of such mortgage, as required by section 10384 and 10387 R. S. Mo, 1909, (Now 11546 and 11549, supra.) which seems to be made applicable to chattel mortgages by Section 2861 R. S. Mo. 1909. (Now 3097 R. S. Mo. 1929.)"

Section 3097 R. S. Mo. 1929, provides 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."

Section 3099, R. S. Mo. 1929, provides 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 mortgagors or grantors alphabetically, and shall note thereon the time of filing such instrument or copy, for which said recorder shall re-

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ceive a fee of ten cents. Such mortgage or deed of trust when satisfied, shall be discharged by either 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, for a fee of ten cents.

"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 in the original of the copy on file, and that such mortgage or deed of trust has been fully paid and satisfied, for which such recorder shall receive a fee of ten cents.

"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 either 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, and the fee for such service shall be ten cents. All fees for the release of such mortgage or deed of trust shall be paid by the mortgagor. 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."

Under the provisions of 3097 *supra*, we see that a chattel mortgage may be recorded as real property conveyances are recorded, or may be filed in the original or by copy, and that when filed it has the same effect as if it was spread upon the record in the manner provided for making real property conveyances. The methods of discharging a chattel mortgage which has been recorded or filed is set out in Section 3099, and these three methods of discharging a chattel mortgage should be recognized by the recorder as sufficient evidence of satisfaction. The recorder, being a ministerial officer, has but to follow the statute, which is directory as to his powers, and he then is not personally liable, for he has done that which he was authorized by law to do. It is true that Section 3099 is rather ambiguous, for it provides methods of release for chattel mortgages "when satisfied," and in the same section provides three methods which when followed it becomes his duty to enter up satisfaction on the record. Under these statutory methods one might hypothecate a case where it becomes the recorder's duty to "satisfy" a chattel mortgage in compliance with the statute which in fact has never been actually satisfied. It is not for the recorder to hypothecate. He has no personal discretion but must only follow the statute to be protected in his official conduct. It is true that the legislature did not intend a chattel mortgage to be released until it be satisfied, but on the other hand they provided exact circumstances under which *prima facie* evidence of satisfaction must be accepted by the recorder, unless of his own knowledge he is aware that these evidences, when submitted, are a trick and a fraud.

Since chattel mortgages may be recorded as real property mortgages are recorded, the first method under Section 3099 was provided so that a marginal release can be made when the chattel mortgage is copied into the record and not filed. In such cases the record can and should show satisfaction by the same method that real property mortgages are now satisfied as *specifically* outlined in Laws 1933, page 196, Section 3078 *supra*, but a recorded chattel mortgage is also subject to a marginal release when method two or three of Section 3099 *supra*, is complied with. Under method two and three, instead of the marginal notation required under method one, that the notes were produced and cancelled, the margin of the record should show that the original mortgage was presented by the mortgagor showing on its face the affidavit of the mortgagor before the recorder that it had been satisfied and paid, or the margin of the record should show that the recorder had been presented with an affidavit by the mortgagee or cestui que trust stating that the recorded mortgage had been fully paid and satisfied.

In those *cases* where the chattel mortgage is recorded by filing them, that part of Section 3099 dealing with marginal

releases on the record is not to be followed, because a marginal release on the record proper was not intended when the chattel mortgage was recorded by filing a copy with the recorder. When recording a chattel mortgage by filing is the method followed, then it is the duty of the recorder, when the mortgage is satisfied under provisions two or three of Section 3099, to let his record show satisfaction by writing the word "satisfied" in the column provided in the index book for that purpose and in the same column place the date that the notation "satisfied" is entered. When the chattel mortgage is shown satisfied by entry on the index, the recorder may determine positively who is the holder of the notes secured thereby and deliver the mortgage to him only, or he may destroy the mortgage upon the holder of the notes refusal to accept the satisfied mortgage then on file.

Whenever a chattel mortgage has been filed and mortgagor or grantor makes an affidavit to the recorder substantially as follows: viz.

"Before me appears _____
 the (mortgagor) (grantor) in the mortgage
 indexed in Book _____ Page _____, who
 presents the original mortgage and upon
 which he recognizes the notation made by
 the holder of the note which notation is
 substantially as follows, "This chattel
 mortgage is the original of a copy now on
 file in the recorder's office and the same
 has been fully paid and satisfied and is
 hereby ordered 'satisfied' of record."

 (Mortgagor) (Grantor)

Subscribed and sworn as true facts before
 me this _____ day of _____.

 Recorder. "

In such a case, it is the duty of the Recorder to mark the index "satisfied" and preserve his affidavit.

Whenever a chattel mortgage has been filed and there- after the mortgagee or cestui que trust makes an affidavit before a notary public or Justice of the Peace, which affidavit be presented to the recorder and is substantially as follows: viz.

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"Before me _____
(a notary public) (a justice of peace)
appeared _____ (the mortgagee)
(the cestui que trust) and takes oath that
the chattel mortgage recorded in Book _____
Page _____ in _____ County, Missouri, has
been fully paid and satisfied and is here-
by ordered 'satisfied' of record.

(Mortgagee) (Cestui que trust)

Subscribed and sworn before me this _____
day of _____.

(Notary) (Justice of Peace).

In such a case it is the duty of the recorder to mark
the index "satisfied" and preserve his affidavit.

CONCLUSION.

The exhibited affidavit submitted and attached to
your request, is in our opinion a sufficient compliance with
method three, outlined in the law as a method calling for the
recorder to mark the index record as "satisfied". It is not
for the recorder to question the exhibit, unless he be apprised
that it be presented in perpetration of a fraud and is not ex-
ecuted in good faith. The recorder, when releasing chattel
mortgages is but a ministerial officer in the performance of a
ministerial act, and he has only to follow the directions of the
statute, to avoid personal liability.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

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