

RECORDER OF
DEEDS:

Recorder has no authority to note upon the records a partial release of property contained in a mortgage.

April 28, 1943



Mr. John P. Sherrod,
Recorder of Deeds,
Jackson County,
Kansas City, Missouri.

Dear Mr. Sherrod:

This will acknowledge receipt of your letter of April 22, 1943, which is as follows:

"The volume of requests for partial releases of filed chattel mortgages has increased greatly during the past year and, since the statutes are not clear as to authority of Recorders to make this class of partial release, I am herewith requesting an opinion from your department on the same.

"Should we require that chattel mortgages be recorded rather than filed when partial release is to be made?

"Please state correct method for making partial releases and whether in each instance of a partial release, presentation of original note, or notes, is required.

"We have found, on inquiry, that the requirements of other Recorders in the state vary, particularly as to requiring presentation of original notes.

Section 3489 Mo. R. S. A., 1939, deals with the method whereby a recorder is to satisfy the record on chattel mort-

gages. Said section is 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 receive a fee of twenty cents. Said fee shall also include and cover all costs for discharging said mortgage or deed of trust according to the methods hereinafter provided. Such mortgage or deed of trust, when satisfied, shall be discharged by any 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.
- "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 is the original of the copy on file, and that such mortgage or deed of trust has been fully paid and satisfied.
- "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 any 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. 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." (Underscoring ours.)

Adverting to that portion of the statute which we have underlined above, it is to be noticed that the three methods prescribed are all conditioned upon the mortgage being "satisfied" or "fully paid and satisfied" or "paid and satisfied." In *Rogers v. Davis*, 194 Mo. App. 378, 388, the Court, in speaking of this section, stated, "The statute merely makes provisions for releasing of record chattel mortgages that have been satisfied."

This ruling taken in connection with the underlined portions of the statutes clearly indicates that the law does not contemplate that a recorder may make partial releases or satisfaction of chattel mortgages, and the statutes making no provision for such partial release or satisfaction, the recorder has no authority to undertake to make a note of such release or satisfaction upon the record.

If the mortgagee desires to release from his lien certain property contained in the mortgage then the proper way to do so is to satisfy the mortgage in full and take back a new mortgage on the property on which the lien is desired to be retained.

Mr. John P. Sherrod

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CONCLUSION

It is, therefore, our opinion that a recorder of deeds is not authorized under the law to note upon the records of his office the fact that a mortgagee has released from the lien of his mortgage a portion of the property contained therein.

Respectfully submitted,

LAWRENCE L. BRADLEY
Assistant Attorney-General

APPROVED:

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