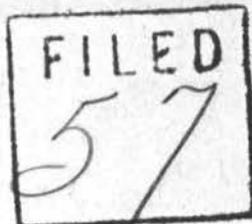


Burton
CHATTEL MORTGAGES:
RECORDER OF DEEDS:

When recorder shall file or record a chattel mortgage.



September 9, 1948

9-21

Mr. Gordon J. Massey
Prosecuting Attorney
Christian County
Ozark, Missouri

Dear Mr. Massey:

This is in reply to yours of recent date wherein you request an opinion upon the following set of facts:

"A chattel mortgage which is not acknowledged or witnessed is offered for filing. Under the law shall same be filed?

"The same chattel is offered for filing and filed. Later the mortgagee requests that same be recorded. Under the law can the recorder record same? Can said chattel be acknowledged while in recorder's files, then recorded. If so how shall he show his records of filing and recording.

"Should the recorder ever receive a chattel without it being witnessed? Without it being acknowledged?"

The purpose for filing or recording a chattel mortgage is to give notice to the world of the existence of the lien created thereby.

Section 3486, R.S. Mo. 1939, which relates to filing chattel mortgages 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 nonresident 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."

A recorder, like other county and state officers, derives the authority to perform official duties from the statutes. The duties of a recorder with respect to recording are set out in Section 13161, R. S. Mo. 1939, which provides, in part, as follows:

"It shall be the duty of recorders to record: First, all deeds, mortgages, conveyances, deeds of trust, bonds, covenants, defeasances, or other instruments of writing, of or concerning any lands and tenements, or goods and chattels, which shall be proved or acknowledged

according to law, and authorized to be recorded in their offices; * * * *"

This statute particularly deals with the duties of a recorder of deeds in respect to recording instruments which are proved or acknowledged. The first question which you submit is whether or not the recorder should file a chattel which is not acknowledged. Referring to said Section 3486, supra, it is indicated that a chattel mortgage may be filed in the office of the recorder of deeds even though it is not acknowledged. This section also indicates that if the chattel mortgage is acknowledged it shall be recorded by the recorder when requested so to do.

You also ask the question that in case a chattel mortgage is on file in the office of the recorder of deeds and the mortgagee desires to have the same recorded, then could the recorder record such chattel, and could this same chattel be acknowledged while in the recorder's files and then recorded; and if such procedure could be followed, how does the recorder show a record of the filing and recording.

Referring to the statute relating to the filing and recording of chattel mortgages we find no authority for the mortgagee to remove the chattel mortgage from the files and then have it recorded. Said Section 3486 seems to contemplate that the original chattel, or a copy, may be filed. Since there is no provision for the removal of a chattel mortgage from the files in the recorder's office except in case of payment of the note for which it is given to secure, we think the procedure contemplated by the lawmakers for the recording of a chattel is that if the mortgagee, or any other interested person, wants to have a chattel recorded and also filed in the chattel mortgage records, that they should file a copy of the chattel mortgage with the recorder for the chattel mortgage record and file the original chattel, duly acknowledged, with the recorder for the purpose of being recorded.

When this procedure is followed the recorder would show the record of filing and the record of recording such chattel the same as if they are two different and distinct mortgages.

In your last question you inquire as to whether or not a recorder should ever receive a chattel without it being witnessed or being acknowledged. Referring again to Sections 3486 and 13161, supra, we find no statute which would require a chattel mortgage to be witnessed or acknowledged unless the recorder is requested to record such instrument. In case he is requested to record the chattel mortgage then under said sections the instru-

ment must be acknowledged.

CONCLUSION

From the foregoing it is the opinion of this department:

- (a) The recorder of deeds should file chattel mortgage presented to him for that purpose even though they are not acknowledged.
- (b) That there is no authority under the statute for a recorder to record a chattel mortgage which is on file in the chattel mortgage files in his office.
- (c) That a chattel mortgage which is on file in the office of the recorder of deeds should not be removed and acknowledged and then recorded but that if the mortgagee desires that such chattel mortgage be recorded then he should file a copy of the chattel with the recorder for the chattel mortgage files and then have recorded the original which should be acknowledged before being recorded.
- (d) That the recorder of deeds may receive chattel mortgages for the purpose of being filed in the chattel mortgage records even though they are not witnessed but that if he is requested to record such chattel mortgage then he should not record it unless it is acknowledged.

Respectfully submitted,

APPROVED:

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