

RECORDER OF DEEDS: - Recorder may indicate partial  
RELEASE OF CHATTEL release of personal property  
MORTGAGE: in chattel mortgages.

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April 27, 1942

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Honorable Conn Withers  
Prosecuting Attorney  
Clay County  
Liberty, Missouri

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Dear Sir:

This is to acknowledge receipt of your letter of recent date, in which you request the opinion of this department.

Your letter is as follows:

"In behalf of the Recorder of Deeds of Clay County, Missouri, I respectfully request your opinion on a subject raised by the Recorder in the following terms:

"The situation is this, - a mortgage covering both real estate and personal property was recorded in this office sometime ago. At a later date a supplemental indenture to this instrument was recorded, giving the trustees in the original mortgage authority to release any part of the personal property covered by the original mortgage. We are now in receipt of an instrument of partial release, covering part of the personal property described in this mortgage. IS THERE ANY PROVISION IN THE STATUTES GIVING THE RECORDER AUTHORITY TO MAKE A PARTIAL RELEASE OF PERSONAL PROPERTY?

April 27, 1942

"As I understand it, Sec. 3470 R. S. Mo. 1939 refers solely to mortgages and deeds of trust on real estate, and the entire scope of the recording and releasing of chattel mortgages is contained in Article III, beginning at Sec. 3486. It seems to me that Sec. 3489 is only for release when the mortgage or deed of trust is satisfied in full.

"I am very anxious to have an opinion on this at an early date, and if you will forward this letter to the Attorney General I will appreciate it very much."

After your recitation of the facts above, you ask this question: Is there any provision in the statutes giving the recorder authority to make partial release of personal property?

From your letter we understand a mortgage covering both real and personal property was given and recorded in your county, and that you are in receipt of an instrument of partial release covering a part of the personal property described in the mortgage. You state in your letter that the original mortgage gives authority to the trustees therein named to release any part of the personal property covered by said mortgage. Since we do not have the mortgage before us, or the instrument of partial release, we are only able to pass on your question as a general proposition of law.

Section 3489 R. S. Missouri, 1939, provides how, and in what instances, the recorder shall release chattel mortgages. We herewith set forth part of said section:

"\* \* \* 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

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(4)

April 27, 1942

which have been entered satisfied  
on the chattel mortgage register."

If a mortgage covering both real estate and personal property is of record in your office, and in said instrument authority is given the trustees named therein to release a part of the personal property covered by said mortgage, the recorder should record said instrument of writing releasing a portion of the personal property described in the mortgage. If the instrument releasing the personal property is properly executed and duly acknowledged, according to law, by persons authorized to execute same, we can see no good reason why it is not a valid release.

It is not necessary, under the above circumstances, for the recorder to enter in a column for that purpose the word "satisfied", as set forth in Section 3489, supra, as the release does not fully satisfy the whole mortgage.

It is only in instances where the mortgage or deed of trust is satisfied in full that it is the duty of the recorder to mark same "satisfied" as provided in Section 3489, supra.

#### CONCLUSION

It is, therefore, our opinion that the recorder should record the instrument which releases the personal property mentioned above, and may, on the margin of the record where the original mortgage is recorded, set forth the book and page where the release is recorded, so that any person examining the record may see just what property has been released and thereby determine for himself whether it is a valid and sufficient release.

APPROVED:

Respectfully submitted

COVELL R. HEWITT  
Assistant Attorney General

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ROY MCKITTRICK  
Attorney General of Missouri

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