

County Clerk and Recorder—Chattel Mortgages—Refusal to File When Not Accompanied by a Receipt Outside the Body of the Instrument.

If there is no receipt accompanying a chattel mortgage in conformity with the requirements of Chapter 183 of the Laws of 1919, the County Clerk and Recorder must refuse to file the same as a chattel mortgage.

John Campbell, Esq.,
County Attorney,
Missoula, Montana.

My dear Mr. Campbell:

You have inquired whether the County Clerk and Recorder should refuse to file chattel mortgages to which no mortgagor's receipt is attached in conformity with the requirement of Chapter 183 of the Laws of 1919, and an opinion rendered by former Attorney General Ford on June 2, 1919, relating to the form of receipt required.

Chapter 183 of the Laws of 1919 reads, in part, as follows:

"And every mortgagee must surrender without cost to the mortgagor at the time of the execution of the mortgage, a correct copy of the original mortgage so signed, with acknowledgements shown thereon. And the mortgagor must surrender to the mortgagee, a receipt which shall be attached to the original mortgage showing that the mortgagee has surrendered to him a copy of such mortgage and said receipt must accompany the mortgage when presented to the Clerk and Recorder and filed therewith. Otherwise said mortgage shall not be filed as a chattel mortgage by the Clerk and Recorder."

The opinion rendered by Attorney General Ford, dated June 2, 1919, and appearing in Volume 8, Attorney General's Opinions, page 158, is to the effect that the mortgagor's receipt may not be incorporated in the body of the mortgage itself, but must be separate therefrom.

As a general rule a chattel mortgage not executed in the manner required by statute is not entitled to be recorded.

11 C. J. 510;
Prior v. Gray, 70 Atl. 341;
Bean v. Parker (Vt.) 90 Atl. 17.

And if a chattel mortgage is filed, though not entitled to record because not executed in compliance with statutory provisions, it does not give constructive notice of its existence.

Starr Piano Co. v. Petrey (Ky.) 182 S. W. 624;
Cross v. Carstens (Ohio) 31 N. E. 506.

The language appearing in the statute, "otherwise said mortgage shall not be filed as a chattel mortgage by the Clerk and Recorder," is, by its terms, mandatory, and it is my opinion that if there is no receipt accompanying the instrument, in conformity with said statute, the Clerk and Recorder must refuse to file the same as a chattel mortgage.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.