

Marriage License and Certificate—Disposition of by Clerk of Court.

The marriage license, with a certificate indorsed thereon by the person solemnizing the marriage, should be recorded by the Clerk of Court and thereafter delivered to the contracting parties.

A. A. Alvord, Esq.,
County Attorney,
Thompson Falls, Montana.

My dear Mr. Alvord:

You have requested my opinion as to what are the duties of the Clerk of Court relative to the marriage license and certificate returned

to him by the person solemnizing the marriage, after the same has been recorded.

Section 3623, Revised Codes of 1907, reads, in part, as follows:

"And when he has completed any such ceremony he shall enter upon such license a certificate of such marriage, showing when and where it occurred, and such certificate shall be attested by two witnesses to such ceremony; he shall, within thirty days after such marriage has been solemnized, return such license and certificate to the clerk of the district court, who shall record the certificate in the same book where the said marriage license is recorded."

Section 3627 provides that both the original certificate of marriage, made as prescribed, and the record thereof, or a copy of such record duly certified, shall be received by all courts in all places as presumptive evidence of such marriage.

The law says nothing regarding the disposition of the license after the certificate indorsed thereon has been recorded. Other documents required by law to be recorded are usually returned to the person filing them for record, as deeds, real estate mortgages and other instruments affecting title to real estate, while instruments affecting title to personal property are filed but not recorded, and are not returned to the person filing them.

Section 3628 requires the person solemnizing a marriage to give to each of the parties, on request, a certificate thereof, but this certificate is not made presumptive evidence of the marriage, as is the original certificate indorsed on the license and recorded by the Clerk of Court. The license itself is recorded by the Clerk before being issued (Sec. 3620, R. C. of 1907), and the certificate is recorded after being returned to the Clerk by the person solemnizing the marriage (Sec. 3623).

Thus the Clerk has a complete record in his office, and this record, or a certificate thereof, is accepted as presumptive evidence of the marriage, the same as the original certificate (Sec. 3627).

There is no reason for retaining the original license and certificate in the office of the Clerk, but, on the other hand, there is good reason for returning it to the parties married under its authority, viz., to give them evidence of their marriage acceptable in the courts.

Therefore, it is my opinion that the original marriage license, with the certificate of the person solemnizing the marriage indorsed thereon, should be returned to the contracting parties by the Clerk of Court after having duly recorded the same in his office.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.