

Secretary of State, Custodian of All Books, Records, Deeds, Etc., Deposited in His Office Pursuant to Law. Mortgage, to Be Recorded by Secretary of State When Presented. Recorded Instrument, When May Be Returned to Person Presenting for Record.

The secretary of state is charged with the custody of all books, records, deeds, etc., keep on deposit in his office pursuant to law; and it is the duty of the secretary of state to record any mortgage or deed of trust when presented for that purpose referred to in Sec. 4294 of the Revised Codes; and likewise his duty to record any satisfaction of such mortgage.

When an instrument which is, by law, entitled to be recorded is presented for record, the person presenting it for record is entitled to have the original instrument returned to him after it has been properly recorded, but where the instrument is

presented for filing and which is not by law entitled to be recorded, the instrument so filed is a permanent file of the office and cannot be returned to the person presenting it.

April 11, 1911.

Hon. A. N. Yoder,
Secretary of State,
Helena, Montana.

Dear Sir:

Your letter of April 6th has been received, wherein you state that the Montana Railroad Company filed in your office for record, a mortgage which mortgage has been recorded as required by law and later a release of this mortgage was also filed for record, which was likewise recorded. The satisfaction of mortgage having been recorded, the persons presenting it for record now requests that the original instrument be returned to them, and you ask my opinion as to whether or not they are entitled to this instrument.

In reply I will say, that by the provisions of Section 153, Revised Codes, the secretary of state is charged with the custody of all books, records, deeds, parchments, maps and papers kept or deposited in his office pursuant to law. By the provisions of Section 4294 it is made the duty of the secretary of state to record in his office any mortgage or deed of trust, when presented for that purpose referred to in the section. It is likewise the duty of the secretary of state to record any satisfaction of such mortgage in the same manner that the mortgage is recorded.

When an instrument, which is by law entitled to be recorded, is presented for recording, it is my opinion that the person presenting it for record is entitled to have the original instrument returned to him, after it has been properly recorded; but where the instrument is presented for filing and which is not by law expressly entitled to be recorded, the instrument so filed is a permanent file of your office, and no one has a right to demand its return.

You are, therefore, advised that in my opinion the person presenting the satisfaction of mortgage for record in your office is entitled to the return of the original as soon as the same has been recorded by you, and your record consists of the instrument as recorded in your office, which is a permanent record.

Yours very truly,

ALBERT J. GALEN,
Attorney General.