

Mortgages of Real Estate, Affidavit of Recording, of Affidavit.

Affidavit of renewal of real estate mortgages must be filed and index record thereof kept in miscellaneous indexes.

August 13th, 1913.

Hon. C. A. Linn,
County Attorney,
White Sulphur Springs, Montana.

Dear Sir:

I am in receipt of your letter of the 11th instant, submitting the question as to how affidavits of the renewal of real estate mortgages should be indexed, and whether same should be filed or recorded.

Chap. 27 of the Laws of 1913, referred to by you, is an innovation relating to real estate mortgages; by the terms of the law no recording of this affidavit is necessary. The direction given is that it is:

“(2) Filed in the office of the county clerk, where said mortgage is recorded.”

The chattel mortgage law, as contained in Secs. 5771 and 5763, Revised Codes, gives specific directions as to filing and indexing, but said Chapter 27 does not assume to give any directions whatsoever except that the affidavit must be filed in the office of the county clerk. Sec. 3033, Revised Codes, relating to the records which must be kept by the county clerk, in Subdiv. 27 thereof, provides:

“A miscellaneous index, in which must be indexed papers not hereinbefore stated.”

Nothing is stated in the section having any relation to affidavits for renewal of real estate mortgages, hence I take it that under the law as it now exists, the only direction given is that these affidavits must be filed and the index record thereof kept in the miscellaneous indexes, indicated in Subdiv. 27 of said Sec. 3033.

This method of keeping record of these affidavits may seem indefinite, incomplete or inappropriate, but there appears to be no other way provided in the law for doing it, and we cannot change the plain provisions of the statute.

Yours very truly,

D. M. KELLY,
Attorney General.