

Chattel Mortgages, New Notes. Mortgages, Chattel Effect of New Note on. Lien on Chattel Mortgage, When Not Lost.

The lien of a chattel mortgage is not lost where a new note is given to secure the payment of the debt.

June 29, 1916.

Hon. H. S. Magraw,
State Bank Examiner,
Helena, Montana.

Dear Sir:

I am in receipt of your letter requesting an opinion of this office, wherein you set forth the following.

"In renewing notes secured by chattel mortgage, it is the quite general practice among bankers in Montana to take a new note, and hold the old note and mortgage as collateral.

We have been recommending that either the old note be retained in its original condition, or that another new note and new mortgage be taken, but find that many of the bankers desire to take new notes in order that their paper may be kept up to date, but are often prevented from taking new mortgages on account of intervening liens.

We would like to know if there is any doubt as to whether or not the new note is secured by the chattel mortgage, when the old note and mortgage are held as collateral to the new note. If this security is binding for the new note and collection were forced, would the suit be made upon the new note or upon the old one, description of which would be recited in the mortgage?"

The practice you describe, while not especially commendable, in my opinion is legal. The lien created by a chattel mortgage is not dependent upon the terms of the note, but is fixed by law at two years and sixty days, with the privilege of extending the same to the full term of five years and sixty days (Section 6, Chapter 86, Laws of 1913). By the express terms of Section 7 of the same Chapter, the maturity of the debt is not dependent on the term of the mortgage lien, but an agreement may be made between the mortgagor and mortgagee extending the time of payment of the debt, with the right to foreclose at any time within the period limited by law for foreclosure.

The general doctrine as laid down in Cyc. is as follows:

"The binding force of a mortgage is not affected by substitution of new notes for those originally given as evidence of the mortgage debt."

7 Cyc. 67,

and in the same volume at page 877, the doctrine is thus stated:

"Where a note is given merely in renewal of another note and not in payment the renewal does not extinguish the original debt or in any way change the debt except by postponing the time of payment, and as a general rule therefore the holder of a renewal note is entitled to the same remedies as if he were proceeding upon the original note."

The new note, however, cannot be made to cover an entirely new obligation.

Wright v. Voorhees, 131 Iowa, 408, 108 N. W. 758.

It should be borne in mind, however, that the taking of a new note in exchange for the original note secured by a chattel mortgage, raises a question of fact bearing upon the intention of the parties, which may or may not operate to discharge the mortgage lien. In this connection, see

Sections 4958 and 4959, Revised Codes;

Caldwell v. Sisson, 150 Mo. App. Rep. 547, 137 S. W. 180.

Suit, of course, would be upon the new note in case of foreclosure.

Yours very truly,

J. B. POINDEXTER,

Attorney General.