

Hail Insurance—Deeds—Mortgagor—Mortgagee—Liens.

The lien for hail insurance is not extinguished by the execution of a deed by the mortgagor to the mortgagee when the lien of the mortgage is prior to the hail insurance lien and the State Board of Hail Insurance is without authority to release the same.

E. K. Bowman, Esq.,
Chairman State Board of Hail Insurance,
Helena, Montana.

My dear Mr. Bowman:

You have submitted the following facts and request an opinion of this office thereon:

In 1921, a Mr. J. M. Pyles took out hail insurance with your Board, the premium upon which amounted to \$138.60. This premium was not paid, and thereafter by operation of law became a lien upon the land. At the time the hail insurance was taken out by Mr. Pyles,

the place was mortgaged to the Bankers Farm Mortgage Company. Subsequent to the time when the hail insurance lien attached, Mr. Pyles being unable to pay to the mortgage company the amount of the mortgage, gave a deed to them of his equity in the land. The mortgage company is now the owner of the land and demands that the lien for hail insurance be released for the reason that the mortgage was a prior lien upon the land.

It might be contended that where the owner of the mortgage became the owner of the fee that the mortgage would thereupon be merged in the title and extinguished. However, this is largely a matter of intent and a merger will not be implied where there is an intervening claim, but equity will keep the legal title and the mortgagee's interest separate, though held by the same person, whenever necessary for the full protection of his just rights, and, if from all the circumstances, a merger would be disadvantageous to the person holding the fee, such intention that a merger shall not result will be presumed and maintained, and equity will keep the liens alive for the purpose of doing justice. It is only when the fee and the lien are in the same person, without any intervening claims, liens or equities, that a merger of the title and the lien will take place. If an outstanding lien or estate intervenes between the several interests uniting in the same person, there cannot be a merger.

Davis v. Randall (Cal.), 48 Pac. 906;
Watson v. Dundee Mtg. Co., 8 Pac. 548 (Ore.);
Richardson v. Hockenhall, 85 Ill. 124;
Swatts v. Bowan (Ind.), 40 N. E. 1057;
Coburn v. Stephens (Ind.), 36 N. E. 132;
Notes to 39 L. R. A. (N. S.), 834.

The lien for hail insurance has not been extinguished by the execution of the deed in question. The lien still stands as security for the hail insurance premium.

Section 39 of Article V, of the Constitution, prohibits the Legislative Assembly from releasing or postponing any obligation or liability of the state, and provides that no such liability or obligation shall be extinguished, "except by payment thereof into the proper treasury." What the Legislature cannot do itself, it cannot delegate to another.

It is, therefore, my opinion that you are without authority to release the hail insurance lien in question.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.