

Mortgages—Chattel Mortgages—Indexes.

It is not the province of the county clerk to pass upon the legality of mortgages presented to him for filing.

The failure of one of two or more mortgagors to sign the receipt required to accompany the mortgage would not invalidate the receipt nor justify the clerk in refusing to file the mortgage.

Mortgages should be indexed in the names of all persons who signed the instrument as mortgagors.

April 21, 1928.

L. T. Elliot, Esq.,
Clerk and Recorder,
Glendive, Montana.

My dear Mr. Elliot:

You have requested my opinion relative to the acceptance of chattel mortgages which have been irregularly executed and I concur in the advice given you by your county attorney that it is not in your province to pass upon the legality of the instrument.

The latter part of section 8276 R. C. M. 1921 requires the mortgagor to surrender to the mortgagee a receipt showing that the mortgagor has received from the mortgagee a copy of the mortgage, and further provides that otherwise the instrument shall not be filed as a chattel mortgage by the clerk.

In my opinion, the failure of one of two or more mortgagors to sign the receipt would not invalidate the receipt nor justify the clerk in refusing to file the mortgage.

Section 4799 R. C. M. requires the clerk to keep two indexes of mortgages, the same to show, among other things, the names of the mortgagor and the mortgagee.

It is my opinion that all persons who are named in the mortgage as mortgagors and who sign the instrument as such should be considered mortgagors and indexed as such even though the instrument may not be acknowledged nor the receipt signed by all of such mortgagors.

Very truly yours,

L. A. FOOT,
Attorney General.