

**Bankruptcy—Mortgages—Recording.**

The time within which a mortgage may be invalidated by bankruptcy proceedings runs from the date the mortgage was executed unless proof is offered showing that it was withheld from record to defeat bankruptcy proceedings.

April 23, 1928.

A. J. Lochrie, Esq.,  
Superintendent of Banks,  
Helena, Montana.

My dear Mr. Lochrie:

You have requested my opinion whether the date of the execution of a mortgage, or the date of its recording, controls the time within which the instrument is avoided by bankruptcy proceedings.

The general rule is stated in 7 C. J. page 160 as follows:

“Where the preference is given by an instrument which, by the law of the state, is required to be recorded, the date of recording is, for the purposes of the bankruptcy act, the date of the giving of the preference, so that it is avoidable if a petition in bankruptcy is filed within four months after that date. But where an instrument which is valid as between the parties and as against general creditors of the grantor without being recorded was executed more than four months prior to the filing of the petition, the transfer or lien cannot be avoided because of the fact that it was not recorded until less than four months before such filing, at least in the absence of proof that it was withheld from record pursuant to agreement for the purpose of defeating the provisions of the bankruptcy act, or that other persons were thereby induced to extend credit or to forego their legal rights.”

In this state an instrument is valid between the parties and as against general creditors without being recorded, and I believe it would be controlled by the last clause of the above quoted statement from Corpus Juris and that in order to invalidate the mortgage the bankruptcy proceedings must be filed within the four months period after recording, or proof must be made showing that the recording was withheld for the purpose of defeating the provisions of the bankruptcy act, or that other persons were induced to extend credit or forego their legal rights by virtue of the failure to record the instrument.

Very truly yours,

L. A. FOOT,  
Attorney General.