

Mortgages—Chattel Mortgages—Corporations—Recording.

Under chapter 39, laws 1921, chattel mortgages, deeds of trust and assignments for the benefit of creditors need not be recorded.

Jay G. Larson, Esq.,
State Examiner,
Helena, Montana.

June 4, 1927.

My dear Mr. Larson:

You have asked whether senate bill 76, chapter 39, acts of the 20th legislative assembly, requires that **chattel mortgages**, deeds of trust, or assignments for the benefit of creditors of both real and personal property, executed by a corporation, are required to be recorded, and if so, what fees should be charged.

The act reads as follows: "All mortgages, deeds of trust, or assignments for the benefit of creditors, of both real and personal property, executed by a corporation, are governed by the law relating to mortgages or deeds of trust of real property and must be recorded in the office of the county clerk of every county where any part of such property is situated. * * *"

Before amendment the section read: "All mortgages, * * * which include personal property either wholly or in part, * * * are governed * * *." The amendment of 1927 changed the words above underscored so as to make them read: "All mortgages, of both real and personal property, executed by a corporation * * *."

Incidentally, the act of 1927 restored the exact language of section 5756 of the 1907 code as it stood before amendment by chapter 72, laws 1921. The purpose of the amendment of 1927 was to exempt corporate chattel mortgages from the necessity of being recorded, but to require corporate mortgages of chattels to be recorded only when such chattels were included in a mortgage that embraced also real estate.

That was the effect of section 5756 of the 1907 code, and the fact that the 1927 act restored the language of the 1907 code is at least significant as to the purpose of the 1927 amendment.

It is my opinion that the words "of both real and personal property" appearing in the 1927 act, mean mortgages which include both real and personal property, and that they do not mean mortgages of either real or personal property.

So construed, it is my conclusion that chattel mortgages, deeds of trust, and assignments for the benefit of creditors, containing personal property, executed by a corporation, are not required to be recorded under chapter 39.

Very truly yours,

L. A. FOOT,
Attorney General.