

Patents—Deeds—Mortgages—Assignments—Recordation.

Patent should be recorded though it does not contain the postoffice address of the grantee, a patent not being a deed within the meaning of house bill 19 of the twenty-first legislative assembly.

Deeds and real estate mortgages executed after July 1, 1929, not showing postoffice address of grantee or mortgagees should not be accepted for recordation. Those executed prior to July 1, 1929, should be accepted for recordation though they do not contain the postoffice address of the grantee or mortgagees.

Assignments of real estate mortgages executed subsequent to July 1, 1925, should not be accepted for recordation if they fail to contain the postoffice address of the assignee. If executed prior to July 1, 1925, they should be accepted and

recorded though they do not contain the postoffice address of the assignee.

A. J. Dorris, Esq.,
County Clerk and Recorder,
Thompson Falls, Montana.

April 3, 1929.

My dear Mr. Dorris:

You have requested an opinion whether under the terms of house bill No. 19 of the Twenty-first Legislative Assembly you should not accept patents for recordation because they do not contain the postoffice address of the grantee.

The house bill above mentioned amends Section 4805 R.C.M. 1921, by adding thereto the following:

"A county clerk shall not receive for recording any deed, mortgage or assignment of mortgage unless the postoffice address of the grantee, mortgagee or assignee of the mortgage, as the case may be, is contained therein."

While a patent and a deed are each a conveyance of title to real estate, I am of the opinion that the word "deed" as used in this enactment is used in its ordinary sense, that is, a conveyance from one private person to another of real property as distinguished from a patent which is generally considered as a conveyance to a private person by the government of public lands owned by it.

Section 6892 R.C.M. 1921 specifically provides for the recording of letters patent from the United States, and it is my opinion that house bill No. 19 did not repeal this section, and that it is ample authority for the recording of patents issued in the form provided by the laws of the United States.

As to this question, it is my opinion that you should record patents from the United States regardless of the fact that they do not contain the postoffice address of the patentee.

You further ask if the provisions of house bill No. 19 would apply to deeds, mortgages and assignments of mortgages executed prior to the passage of the bill.

As to assignments of mortgages, Chapter 14, Laws of 1925, amending Section 8259, R.C.M. 1921, required the postoffice address to be shown in the assignment of mortgages, and if it was not so shown the assignment was not subject to recordation. This act became effective July 1, 1925. It is still in force and effect and covers the same subject matter as house bill No. 19, insofar as it relates to assignments of real estate mortgages.

As to deeds and mortgages, house bill No. 19 is a new enactment. The object of the bill, in my opinion, was to require the insertion in the deed, mortgage or assignment of the mortgage the postoffice address of the grantee, mortgagee or assignee for the purpose of the public records, and to effect this object the legislature provided that if the

instrument failed in that respect it should not be recorded. Of course, the legislature could not by this act legislate an essential element in instruments that was not essential under the law existing at the time of their execution, and if these instruments heretofore executed and not containing the information required by house bill No. 19, and which are unrecorded, were to be barred from recordation, such action would not have the effect that house bill No. 19 sought to attain, that is, to compel a public record of the addresses of the grantees, mortgagees and assignees. The object, therefore, of the bill can only be attained by applying it to instruments executed after the law takes effect, which will be July 1st.

Section 3, R.C.M. 1921, provides that no statute shall be deemed retrospective unless it is expressly declared to be so in the statute. House bill No. 19 does not, in my opinion, declare the act to affect instruments heretofore executed, and, in my opinion, it did not intend to do so, and it does not have that effect.

It is therefore my opinion that as to assignments of real estate mortgages you should not accept them for recordation if they were executed subsequent to July 1, 1925, and they fail to give the postoffice address of the assignee; but if they were executed prior to July 1, 1925, and do not contain the address, then you should accept them to be recorded.

As to deeds and real estate mortgages, any of these instruments executed after July 1, 1929, and not showing the postoffice address of the grantee or mortgagee, you should not accept for recordation; but any deed or mortgage executed prior to July 1, 1929, should be accepted by you to be recorded even though it does not contain the postoffice address of the grantee or mortgagee.

Very truly yours,

L. A. FOOT,

Attorney General.

By L. V. Ketter, First Assistant.