

Chattel Mortgages—Recording—Filing—Personal Property—Real Property.

A chattel mortgage covering personal property alone is not required to be recorded but should be filed as a chattel mortgage. Mortgages covering real and personal property together should be recorded.

Mr. Dewey L. Dawson,
County Clerk,
Boulder, Montana.

September 29, 1931.

My dear Mr. Dawson:

You inquire if under chapter 11 of the laws of 1931, amending section 8273 R.C.M. 1921, as theretofore amended, chattel mortgages are to be recorded when they cover personal property alone or if recording is necessary only in those instances where the mortgages cover real and personal property together.

Section 8273, before its amendment in 1927, provided that mortgages, deeds of trust and assignments for the benefit of creditors executed by a corporation "which include personal property wholly or in part" were governed by the law relating to personal property and were required to be recorded. It will be observed, first, that the section only applied to corporation mortgages, deeds of trust or assignments for the benefit of creditors, and, second, that it had application to such instruments when they included in whole or in part, personal property. Therefore, a mortgage made by a corporation covering either its personal property exclusively or real and personal property together was required to be recorded.

This section was amended by chapter 39 of the laws of 1927, which amendment provided that all such instruments covering "both real and personal property" executed by a corporation were to be governed by

the laws relating to real estate mortgages and were required to be recorded. It will thus be seen that there was eliminated from the statute the words "personal property either wholly or in part" and there was substituted in their stead the words "both real and personal property." The word "both" as here used is to be given its ordinary meaning, which, according to the dictionary, is "the two inclusively or together; the one and the other alike; referring to two, and not merely to one of them."

The word as employed in the amendment emphasizes the change in the law that was made by the amendment, which change in effect was that such instruments executed by a corporation, when covering only personal property, would no longer be governed by the section but there would remain subject to the provisions of said section those instruments executed by a corporation which covered in part personal property and in part real property. The word "both" was used to emphasize the necessity of the two kinds of property being covered by the instruments in order to be subject to the terms of the act, that is, the instrument must deal with real and personal property together—both must be included in the instrument—not merely one of them. There was no necessity to emphasize the combination of the two kinds of property by the use of the word "both," if it was intended that the instrument would be governed by the act if they covered either real or personal property. Such an intention could have been made plain by merely using the expression "real or personal property." To make sure that such was not the intention the legislature used the conjunction "and" instead of the disjunctive "or," and to make doubly sure that it was the combination of the two kinds of property in one instrument that was within the contemplation of the legislature rather than either of the two kinds that body emphasized the necessity of the combination by declaring the instruments to which the act applied were those which covered "both" real and personal property.

The section was again amended by chapter 11 of the acts of 1931 by which amendment the law was extended to all such instruments above mentioned covering both real and personal property when not only executed by corporations but also by associations, partnerships, individuals and an individual. It further specifically provides that such instruments must be recorded and need not be filed as chattel mortgages. They must be indexed "both in chattel and real estate mortgage indices" and a reference must be made in the chattel mortgage record to the book and page wherein the mortgage is recorded. Obviously, there would be no logical reason which would move the legislature to provide that a mortgage of real estate alone should be indexed in the chattel mortgage indices, yet if the act was to be held to apply to mortgages of either real or personal property such a mortgage of real estate would be required to be indexed in the chattel mortgage record. This provision for indexing the instrument in the chattel mortgage record, as well as in the real estate mortgage record is further evidence of the fact that the instruments the legislature had in mind were those which covered, in the language of the statute, "both real and personal property"—the two together, not either one separately.

It is therefore my opinion that a chattel mortgage executed either

by corporations, associations, partnerships, individuals or an individual, covering personal property alone, is not required to be recorded but is to be filed as provided by other laws relating to chattel mortgages, and that it is only mortgages which cover real and personal property together which are executed by corporations, associations, partnerships, individuals, or an individual, that need to be recorded under the provisions of said section 8273 as amended by chapter 11 of the acts of 1931.

Very truly yours,

L. A. FOOT,

Attorney General.