Hail Insurance—Liens—Priority—Mortgages.

Where a new mortgage is given as a renewal of an old mortgage in the absence of any paramount equities the mortgagee does not lose his right of priority, and a lien for hail insurance which was not prior to the old mortgage would not take priority over the new mortgage.

Mr. E. K. Bowman, January 22, 1932.
Chairman, State Board of Hail Insurance,
Helena, Montana.

My dear Mr. Bowman:

You have requested my opinion on the following question: A mortgage was filed on real estate in 1916. In December, 1928, the mortgagee agreed to renew the mortgage and with that in view satisfied the original mortgage in December, 1928, and filed a new mortgage, securing the same indebtedness in January, 1929. Following the filing of the new mortgage in 1929 the mortgagor carried state hail insurance which was assessed against the land and which has not been paid. Is this hail insurance tax lien prior to that of the mortgage in question?

In answer will say that under the provisions of section 351, R.C.M. 1921, as amended by chapter 40 of the laws of 1923, a tax was authorized to be levied against land of the insured for hail insurance which created a lien on the land which had priority over all mortgages except those of record at the time of the approval of the act, to-wit, February 28, 1923; hence, the original mortgage was not subject to the lien for hail insurance and the question then is, Did the mortgagee lose his right of priority by renewing such mortgage in the manner above described?

It is the general rule that the cancellation of a mortgage on the record is not conclusive as to its discharge or as to the payment of the indebtedness secured thereby, and where the holder of a senior mortgage discharges it of record, and contemporaneously therewith, takes a new mortgage, he will not, in the absence of paramount equities, be held to have subordinated his security to an intervening lien unless the circumstances of the transaction indicate this to have been his intention, or such intention on his part is shown by extrinsic evidence.

White vs. Stevenson (Cal.) 77 Pac. 828;
Pearce vs. Buell (Ore.) 29 Pac. 78;
American Savings Bank & Trust Co. vs. Helgesen (Wash.) 122 Pac. 26.

While the lien created in this instance was created in 1929 and therefore was not an intervening lien of record at the time the first mortgage was satisfied, yet since under our statute it would have a priority over any mortgage filed for record after February 28, 1923, it is made for all intents and purposes an intervening lien by statute and would be governed by the same principles of law as though it had attached prior to the satisfaction of the original mortgage and since it is admitted that the new mortgage was given as a renewal I can see no paramount equities

which would have any bearing upon the situation presented, and it is my opinion that the mortgagee did not lose his right of priority by renewing the original mortgage in the above manner and that the lien for hail insurance is not prior to the mortgage in question.

Very truly yours,

L. A. FOOT,
Attorney General.