

3142

A "CHATTEL MORTGAGE" EXECUTED BEFORE JULY 1, 1962 MAY BE FILED AFTER THAT DATE AS A "CHATTEL MORTGAGE"; IT DOES NOT HAVE TO BE CHANGED TO "SECURITY AGREEMENT"—OPINION 3072, OAG, 1962, AMEND. SEN. BILL 5, 104TH G.A., §§1309.40, 1309.39 1309.02, R.C.

## SYLLABUS:

When an instrument executed prior to July 1, 1962, entitled "Chattel Mortgage," is presented to the county recorder for filing after that date, such instrument may properly be filed under Section 1309.40, Revised Code, if it meets the requirement of a financing statement as contained in division (A) of Section 1309.39, Revised Code, and there is no requirement that the title "Chattel Mortgage" be changed to "Security Agreement," or other title, before such instrument may be so filed.

Columbus, Ohio, July 13, 1962

Hon. E. Raymond Morehart, Prosecuting Attorney  
Fairfield County, Lancaster, Ohio

Dear Sir:

In my Opinion No. 3072, dealing with the "Uniform Commercial Code" and issued to you on June 15, 1962, I held in the fourth paragraph of the syllabus as follows:

"4. The county recorder is not required to determine whether financing statements presented to him for filing under Sections 1309.39 and 1309.40, Revised Code, as effective July 1, 1962, are legally sufficient in that they substantially comply with the requirements of said sections, and other provisions of the Act, but the county recorder may accept purported financing statements presented to him for filing if such instruments appear to be what they are purported to be."

Since the issuance of that opinion the question has arisen whether a county recorder may accept for filing an instrument executed prior to July 1, 1962, entitled "Chattel Mortgage." It is my understanding that some question exists about the state in this regard, some recorders accepting such instruments, others requiring that the title "Chattel Mortgage" be changed to "Security Agreement."

The "Uniform Commercial Code" was enacted by Amended Senate Bill No. 5 of the 104th General Assembly, effective July 1, 1962. Section 3 of that act reads, in part, as follows:

"This act shall take effect on July 1, 1962.

"Transactions validly entered into before such date and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this Act as though such repeal or amendment had not occurred.

"\* \* \* \* \* \* \* \* \* \* \* \* \* \* \*"

As to filings with the county recorder under the new law, Section 1309.40, Revised Code, reads in part:

"(A) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under sections 1309.01 to 1309.50, inclusive, of the Revised Code.

"\* \* \* \* \* \* \* \* \* \* \* \* \* \* \*"

Regarding what is a financing statement, division (A) of Section 1309.39, Revised Code, provides:

"(A) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement cover crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties."

That Sections 1309.39 and 1309.40, *supra*, are applicable to security interests created by chattel mortgages, is seen in division (B) of Section 1309.02, Revised Code, reading:

"(B) Sections 1309.01 to 1309.50, inclusive, apply to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. Sections 1309.01 to 1309.50, inclusive, of the Revised Code do not apply to statutory liens except as provided in section 1309.29 of the Revised Code."

Accordingly, it does not appear important whether the instrument in question is entitled "Chattel Mortgage" or "Security Agreement." If the instrument is signed by the debtor and the secured party, gives a proper address of the secured party, gives a mailing address of the debtor, and contains a statement indicating the types, or describing the items, of collateral, it is sufficient; and a copy of the security agreement (the chattel mortgage in this case) is sufficient as a financing statement if it contains the necessary information and is signed by both parties. It will be remembered, however, that the county recorder does not have a duty to determine whether a financing statement is legally sufficient, but may accept purported financing statements presented to him for filing if such instruments appear to be what they are purported to be (Opinion No. 3072, *supra*).

Accordingly, it is my opinion and you are advised that when an instrument executed prior to July 1, 1962, entitled "Chattel Mortgage," is presented to the county recorder for filing after that date, such instrument may properly be filed under Section 1309.40, Revised Code, if it meets the requirement of a financing statement as contained in division (A) of Section 1309.39, Revised Code, and there is no requirement that the title "Chattel Mortgage" be changed to "Security Agreement," or other title, before such instrument may be so filed.

Respectfully,  
MARK McELROY  
Attorney General