

3249

## SYLLABUS:

The procedure for the cancellation of a chattel mortgage which was filed prior to July 1, 1962, but which is cancelled on or after that date, is provided by Section 1309.41, Revised Code, as effective July 1, 1962; and under that provision of law, to effect such a cancellation, a termination statement must be presented to the county recorder (the filing officer), for the filing and indexing of which said recorder should charge a fee of one dollar.

Columbus, Ohio, August 31, 1962

Hon. John D. Sears, Jr., Prosecuting Attorney  
Crawford County, Bucyrus, Ohio

Dear Sir:

Your request for my opinion reads as follows :

“I have been requested by the Crawford County Recorder for an opinion as to what the proper charge or fee should be for the cancellation of a chattel mortgage, which chattel mortgage was filed prior to July 1, 1962 but canceled subsequent to that date.

“I would appreciate your opinion as to whether or not the fee for cancelling a chattel mortgage that was filed under the old law being prior to July 1, 1962, but being cancelled after July 1, 1962, should be the sum of \$1.”

The law generally styled the “Uniform Commercial Code” was enacted by the 104th General Assembly, effective July 1, 1962 (Amended Senate Bill No. 5). Section 3 of the Act reads in part:

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“Instruments, documents, or notices filed prior to July 1, 1962, in accordance with the law at the time of such filings

shall be deemed to be filed under section one of this Act as of the original date of filing and may be continued or terminated as provided in section one of this act."

In my Opinion No. 3072, issued on June 15, 1962, I considered certain aspects of Amended Senate Bill No. 5, and held in the second and third paragraphs of the syllabus of that opinion as follows :

"2. On and after July 1, 1962, any continuation and termination of all instruments, documents and notices then on file with the county recorder must be accomplished as provided in Amended Senate Bill No. 5, *supra*, if the statute which authorized the filing of said papers is affected by said Act, and the fees to be charged by the county recorder and duties of the county recorder as to such filings are those provided in said Act, particularly those set forth in Sections 1309.38, *et seq.*, Revised Code, as effective July 1, 1962.

"3. On and after July 1, 1962, the termination of an instrument which was filed prior thereto and which is then governed by the aforementioned Act, must be accomplished by the filing of a termination statement which meets the standards of the Act, particularly Section 1309.41, Revised Code; however, no particular form is required for a termination statement and, if the form now in use for cancelling instruments complies with the requirements of said Act for termination statements, such form may be used."

Section 1309.41, Revised Code, as amended by Amended Senate Bill No. 5, effective July 1, 1962, deals with the termination of security agreements by the use of a termination statement. Said Section 1309.41 reads, in part, as follows :

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"(B) On presentation to the filing officer of such a termination statement he must note it in the index. The filing officer shall remove from the files, mark 'terminated' and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment, or statement of release pertaining thereto.

"(C) The uniform fee for filing and indexing a termination statement including sending or delivering the financing statement shall be one dollar."

Thus, although a chattel mortgage may have been filed with the county recorder prior to July 1, 1962, the effective date of Amended Senate

Bill No. 5, such mortgage is cancelled by the county recorder (the filing officer) under the law as existing of that date.

Section 1309.41, *supra*, contains the procedure for such cancellation and provides that a fee of one dollar be charged by the county recorder for filing and indexing the termination statement required for cancellation.

Accordingly, it is my opinion and you are advised that the procedure for the cancellation of a chattel mortgage which was filed prior to July 1, 1962, but which is cancelled on or after that date, is provided by Section 1309.41, Revised Code, as effective July 1, 1962; and under that provision of law, to effect such a cancellation, a termination statement must be presented to the county recorder (the filing officer), for the filing and indexing of which said recorder should charge a fee of one dollar.

Respectfully,  
MARK McELROY  
Attorney General