

OPINION NO. 69-001

Syllabus:

1. A water utility lien held by a private water utility corporation which purports to encumber or affect real property is recordable in the mortgage record under Section 317.08 (B), Revised Code.

2. In recording instruments under Section 317.08 (B), Revised Code, the name of each grantor shall be entered in the direct index under the appropriate letter and the name of each grantee shall be entered in the reverse index under the appropriate letter.

To: J. Warren Bettis, Columbiana County Pros. Atty., Lisbon, Ohio
By: Paul W. Brown, Attorney General, January 15, 1969

I am in receipt of your request for my opinion whercin you ask:

1. Is a water utility lien held by a private water utility corporation recordable in the mortgage record by reason of Section 317.08 (B), Revised Code?

2. If said document is recordable, a majority of current owners of the property to which the liens would attach are purchasing under the terms of a land contract and not by deed, and as such, by what method would the documents be indexed?

Section 5301.25, Revised Code, provides in pertinent part:

"(A) All deeds, land contracts referred

to in division (B) (2) of section 317.08 of the Revised Code, and instruments of writing properly executed for the conveyance or encumbrance of lands, tenements, or hereditaments, other than as provided in section 5301.23 of the Revised Code, shall be recorded in the office of the county recorder of the county in which the premises are situated, * * *

Section 317.08, Revised Code, lists the records to be kept by the county recorder as follows:

"The county recorder shall keep five separate sets of records as follows:

"(A) A record of deeds, in which shall be recorded all deeds and other instruments of writing for the absolute and unconditional sale or conveyance of lands, tenements, and hereditaments; all notices, as provided for in sections 5301.47 to 5301.56, inclusive, of the Revised Code; all declarations and bylaws as provided for in sections 5311.01 to 5311.22, inclusive, of the Revised Code; and all certificates as provided for in section 5311.17 of the Revised Code;

"(B) A record of mortgages, in which shall be recorded:

"(1) All mortgages, including amendments, supplements, modifications, and extensions thereof, or other instruments of writing by which lands, tenements, or hereditaments are or may be mortgaged or otherwise conditionally sold, conveyed, affected, or encumbered; (Emphasis added)

"(2) All executory installment contracts for the sale of land executed after September 29, 1961, which by the terms thereof are not required to be fully performed by one or more of the parties thereto within one year of the date of such contracts;

"(C) A record of powers of attorney;

"(D) A record of plats, in which shall be recorded all plats and maps of town lots, and of the subdivision thereof, and of other divisions or surveys of lands, and any center line in survey of a highway located within the county, the plat of which shall be furnished by the director of highways or county engineer and all drawings as provided for in

sections 5311.01 to 5311.22, inclusive, of the Revised Code;

"(E) A record of leases, in which shall be recorded all leases, memoranda of leases, and supplements, modifications, and amendments thereof.

"All instruments or memoranda of instruments entitled to record shall be recorded in the proper record in the order in which they are presented for record. The recorder may index, keep, and record unemployment compensation liens, federal tax liens, discharges of recognizances, and excise, and franchise tax liens on corporations, and liens provided for in section 5311.18 of the Revised Code in one volume."

The office of the Attorney General has opined on past occasions that the county recorder, as a ministerial officer, has the duty to receive and record a written instrument which purports to affect a conveyance or an encumbrance on real property. See Opinion No. 1053, Opinions of the Attorney General for 1964, page 2-202; Opinion No. 6400, Opinions of the Attorney General for 1956, page 275; Opinion No. 4531, Opinions of the Attorney General for 1932, page 960.

The water utility liens under discussion are allegedly created in recorded restrictive covenants, deed restrictions, plat restrictions, and in conditions contained in the sales contracts. Clearly these liens purport to affect the conveyance of real property. Therefore, the precise problem raised by your first question is in which of the five separate categories outlined in Section 317.08, supra, should the water utility liens be filed.

A close examination of Section 317.08, supra, reveals that such documents would be recordable under Section 317.08 (B) (1), Revised Code, which provides that written instruments by which lands are encumbered are entitled to record under this subsection. Although I refrain from the expression of any opinion as to the legal efficacy of the liens in question, it is quite clear that these instruments purport or attempt to encumber or affect real property and in doing so would affect the conveyance of the property. Therefore, under Section 5301.25, supra, said instruments are recordable and Section 317.08 (B) (1), supra, directs that such encumbrances be recorded in the mortgage records.

You then ask my opinion as to how such documents should be indexed, since a majority of lot owners are purchasing under a land contract which does not entail a mortgage. As regards indexing, Section 317.18, Revised Code, provides in pertinent part:

"At the beginning of each day's business

the county recorder shall make and keep up general alphabetical indexes, direct and reverse, of all the names of both parties to all instruments theretofore received for record by him. * * * The indexes shall show the kind of instrument, * * *. The name of each grantor shall be entered in the direct index under the appropriate letter, * * *. The name of each grantee shall be entered in the reverse index under the appropriate letter, * * *."

The statute clearly requires the names of both parties to all recordable instruments to be indexed in direct and reverse indexes, the grantor's name being in the direct index and the grantee in the indirect.

Since the terms "grantee" and "grantor" are not defined by the statute, I can only assume these terms be accorded their commonly accepted legal meaning. "Grantee" would refer to the person upon whom the interest is bestowed and "grantor" the person by whom an interest in land is bestowed.

As regards indexing a land contract, the grantor is the party conveying the right to possession of the land and the grantee is the party obtaining the right to possession of the property. Accordingly, the grantor's (vendor's) name should appear in the direct index and the grantee's (vendee's) in the reverse index.

Therefore, in specific answer to your second question, I would cite the first paragraph of the syllabus in Opinion No. 2567, Opinions of the Attorney General for 1961, page 275, which states:

"1. In keeping the records required by division (B) of Section 317.08, Revised Code, as effective September 29, 1961, the county recorder is required by Section 317.18, Revised Code, to enter the name of each grantor in the direct index under the appropriate letter, and name of each grantee in the reverse index under the appropriate letter."

Accordingly, it is my opinion and you are hereby advised:

1. A water utility lien held by a private water utility corporation which purports to encumber or affect real property is recordable in the mortgage record under Section 317.08 (B), Revised Code.

2. In recording instruments under Section 317.08 (B), Revised Code, the name of each grantor shall be entered in the di-

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