

Loramie in Shelby County, Ohio, said property so leased being a small island in Section 1, Township 7 South, Range 4 East, in said lake or reservoir, which island as to location is more particularly described in said lease.

This lease, which is one for a term of fifteen years, which calls for an annual rental of six per cent upon the appraised value of the property leased and which appraised value is the sum of three hundred and fifty dollars, is executed by the Conservation Council under the authority of Section 472-1, General Code, as enacted as a part of the conservation act passed by the 88th General Assembly.

Upon consideration of the provisions of said lease I find said lease to be in conformity with the provisions of said section of the General Code and with other statutory provisions relating to leases of this kind.

I am accordingly approving said lease as to legality and form as is evidenced by my approval endorsed upon said lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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2245.

APPROVAL, BONDS OF CADIZ VILLAGE SCHOOL DISTRICT, HARRISON COUNTY, OHIO—\$50,000.00.

COLUMBUS, OHIO, August 19, 1930.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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2246.

MORTGAGE—MORTGAGEE NOT REQUIRED TO WAIT UNTIL FULL EXPIRATION OF 21 YEARS FROM LAST DUE DATE BEFORE SAME CAN BE RE-FILED—AFFIDAVIT MUST BE FILED THEREWITH—NO PHYSICAL ATTACHMENT NECESSARY.

**SYLLABUS:**

1. *Under the provisions of Section 8546-2, General Code, a mortgagee is not required to wait until the full expiration of twenty-one years from the last due date of the principal sum before he may re-file the same.*

2. *Said section requires an affidavit to be filed in conjunction with said mortgage when re-filed, but makes no requirement relative to said affidavit being upon or attached to said mortgage.*

COLUMBUS, OHIO, August 20, 1930.

HON. RAY T. MILLER, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—In your recent communication, you request an opinion upon inquiries presented to you by your county recorder in his letter, a copy of which you enclose and which reads:

"General Code Section 8546-2 deals with mortgages 'which remain unsatisfied or unreleased of record for more than twenty-one years after the last due date' etc., and provides for the re-filing for record of such mortgages, 'together with an affidavit stating the amount remaining due' etc.

Two questions have arisen in connection with the procedure required by the above section and because the matter is important and also because procedure should be uniform throughout the state, I think the Attorney General should rule on the questions.

Will you please obtain from the Attorney General his ruling on these two questions:

First—Must mortgagees in such mortgages allow 'more than twenty-one years' to elapse before they can re-file for record, or can they re-file before the twenty-one years have elapsed?

Second—Careful procedure would require the affidavit provided for in said section to be on the mortgage—can the county recorder receive for record such mortgages where the affidavit is not on the mortgage but is attached with paste or some form of paper fastener?"

Section 8546-2 of the General Code, to which you refer, was enacted by the 86th General Assembly, and reads:

"The record of any mortgage which remains unsatisfied or unreleased of record for more than twenty-one years after the last due date of the principal sum or any part thereof, secured thereby, as shown in the record of such mortgage, shall not be deemed to give notice to or to put on inquiry any person dealing with the land described in such mortgage that such mortgage debt remains unpaid or has been extended or renewed; and as to subsequent bona fide purchasers, mortgagees and other persons dealing with such land for value, the lien of such mortgage shall be deemed to have expired; the mortgage creditor, however, shall have the right at any time to refile in the recorder's office the mortgage or a sworn copy thereof for record, together with an affidavit stating the amount remaining due thereon and the due date thereof, as extended, if it be extended, and thereupon, subject to the rights of bona fide purchasers, mortgagees and other persons dealing with such land for value, which rights were acquired or vested between such expiration and re-filing, such re-filing shall be deemed to be constructive notice of such mortgage only for a period of twenty-one years after such re-filing, or for twenty-one years after the stated maturity of the debt, whichever be the longer period; provided, however, that as to such mortgages of record at the time of the effective date of this act, the constructive notice of their recording shall not be deemed to have expired in any event prior to two years from and after the effective date of this act."

From the above section it is clear that a mortgage on file is no notice to subsequent bona fide purchasers and mortgagees after the expiration of twenty-one years after the last due date of the principal sum or any part thereof, unless the same is re-filed as required in said section.

Your inquiry, of course, presents the problem as to whether the full twenty-one year period must expire or whether the same may be re-filed prior to the expiration of said twenty-one years after the last due date. The language provides that it may be re-filed at "any time". While there are other provisions which probably could give rise to the contention that it is not contemplated that the re-filing may occur prior to the expiration of said full period, it is believed that the latter construction

cannot be sustained. Other provisions, of course, refer to the rights that intervene between the date that the twenty-one year period expires and the date of the re-filing. However, the latter provision only has application in the event there is such an intervening period. If the full period must expire before a mortgage may be re-filed, then a mortgagee would have to be on the alert and be waiting at the court house the moment the twenty-one year period would expire in order to protect his rights by re-filing said mortgage. Such a construction would not seem to be justified by law nor common sense. Without further discussion of this phase of the inquiry, it is my opinion that a mortgagee may re-file his mortgage at any time either before or after the expiration of twenty-one years from the last due date of the principal sum secured.

In considering your inquiry relative to the authority of the recorder to receive for filing the affidavit attached to the original mortgage by means of paste or paper fasteners, it will be observed that Section 8546-2, supra, requires an affidavit stating the amount remaining due upon the mortgage which is to be re-filed, to be filed at the same time with the mortgage. In other words, the statute states that the mortgage creditor shall have the right to re-file the mortgage "together with an affidavit", etc. The lexicographers have defined the word "together" as meaning "in company or association with respect to time and place"; it also has been defined as "in conjunction" or "in concert".

From the foregoing, it has been seen that the affidavit should be filed in conjunction with the mortgage; however, there is no requirement that the same be set forth on the mortgage or even attached thereto, although such may be good practice.

In specific answer to your inquiries, it is my opinion that:

1. Under the provisions of Section 8546-2, General Code, a mortgagee is not required to wait until the full expiration of twenty-one years from the last due date of the principal sum before he may re-file the same.

2. Said section requires an affidavit to be filed in conjunction with said mortgage when re-filed, but makes no requirement relative to said affidavit being upon or attached to said mortgage.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2247.

APPROVAL, ABSTRACT OF TITLE TO LANDS OF AMOS A. STOLTZ IN  
PERRY TOWNSHIP, HOCKING COUNTY, OHIO.

COLUMBUS, OHIO, August 21, 1930.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval an abstract of title, administrator's deed, encumbrance estimate No. 783 and controlling board certificate, relating to certain tracts of land located in Perry Township, Hocking County, Ohio, which were owned by one Amos A. Stoltz in his lifetime and which were purchased by the State of Ohio at administrator's sale. This property is more particularly described as follows:

"Being Fractional Lot No. 2 of Section 25, Township 12, Range 19, con-