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1. IN KEEPING RECORDS—COUNTY RECORDER REQUIRED TO ENTER THE NAME OF EACH OPERATOR IN DIRECT INDEX UNDER THE APPROPRIATE LETTER—AND THE NAME OF EACH GRANTEE IN THE REVERSE INDEX UNDER THE APPROPRIATE LETTER.

2. IN INDEXING AN EXECUTORY CONTRACT FOR THE SALE OF LAND WHICH BY THE TERMS THEREOF IS NOT REQUIRED TO BE FULLY PERFORMED BY THE PARTIES WITHIN ONE YEAR OF THE DATE OF SUCH CONTRACT—THE RECORDER SHOULD CONSIDER THE GRANTOR TO BE THE PARTY CONVEYING THE RIGHT TO POSSESSION OF THE LAND—AND THE GRANTEE TO BE THE PARTY OBTAINING THE RIGHT TO POSSESSION OF THE LAND—§§317.08, R. C., 317.18, R. C.

SYLLABUS:

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 the name of each grantee in the reverse index under the appropriate letter.

2. In indexing an executory contract for the sale of land which by the terms thereof is not required to be fully performed by the parties within one year of the date of such contract, the recorder should consider the grantor to be the party conveying the right to possession of the land, and the grantee to be the party obtaining the right to possession of the land.

Columbus, Ohio, October 12, 1961

Hon. Earl W. Allison, Prosecuting Attorney  
Franklin County, Columbus 15, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“The 104th General Assembly recently enacted Amended House Bill No. 81 which amended Section 317.08 of the Revised Code.

“Section 317.08 of the Revised Code provides for the keeping of five (5) sets of records, paragraph (B) of which reads as follows :

“ (B) A record of :

“ (1) All mortgages or other instruments of writing by which lands, tenements, or hereditaments are or may be mortgaged or otherwise conditionally sold, conveyed, affected, or encumbered ;

“ (2) All executory installment contracts for the sale of land executed after the effective date of this section 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 ;’

“Subparagraph (2) quoted above provides for the indexing of all executory installment contracts for the sale of lands in the mortgage records.

“The Franklin County Recorder has asked our opinion as to whether such executory contracts are to be indexed in the mortgagor or mortgagee records.

“Since the answer to this question affects all county recorders in the State of Ohio, we respectfully request your opinion as to whether such contracts should be indexed in the mortgagor or mortgagee record, or both.”

The amendment to Section 317.08, Revised Code, by Amended House Bill No. 81 of the 104th General Assembly, effective September 29, 1961, consisted solely of the addition of paragraph (2) pertaining to land contracts. Previous to the enactment of this language, it might have been argued that land contracts were “\* \* \* instruments of writing by which lands \* \* \* are \* \* \* affected \* \* \*.” Owing to an early case, however, containing *dicta* to the effect that such an instrument did not, in law, affect

land, later cases held that land contracts were not entitled to be recorded (See *Churchill v. Little*, 23 Ohio St., 301 and *Standard Oil Co. v. Moon*, 34 Ohio App., 123, respectively). Consequently, a predecessor of mine, bowing to a situation which, as he wrote, he did not feel authorized to alter, gave his opinion that land contracts were not entitled to be recorded (Opinion No. 5064, Opinions of the Attorney General for 1955, page 150). With said paragraph (2), however, it is clear that land contracts may now be recorded.

While your question refers to "mortgagor or mortgagee record," a land contract does not, of course, entail a mortgage. The question thus appears to be concerned with how executory installment contracts for the sale of land, which by the terms thereof are not required to be fully performed by one of the parties thereto within one year of the date of the contracts, should be indexed.

As to indexes, Section 317.18, Revised Code, reads in 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, \* \* \*." (Emphasis added)

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

The terms "grantor" and "grantee" are not, however, defined in the statute, and I, therefore, assume that the legislature intended these to carry their commonly accepted legal meaning—that "grantor" refers to the person by whom an interest in land is bestowed, and that "grantee" refers to the person upon whom the interest is bestowed, (See "Grant," "Grantee," and "Grantor," *Black's Law Dictionary* 4th ed., page 829.)

In the case of a mortgage, the person conveying the interest in land is the mortgagor. He keeps the right to possession and conveys the security interest, commonly termed a defeasible fee. Accordingly, in indexing a mortgage, the mortgagor's name should appear in the direct index and the mortgagee's in the reverse. In the case of the usual land contract, the

person conveying the interest in land is the vendor. He keeps his security interest, in the form of the legal title, and conveys the right to possession. Accordingly, the vendor's name should appear in the direct index and the vendee's in the reverse.

In conclusion, it is my opinion and you are advised :

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 the name of each grantee in the reverse index under the appropriate letter.

2. In indexing an executory contract for the sale of land which by the terms thereof is not required to be fully performed by the parties within one year of the date of such contract, the recorder should consider the grantor to be the party conveying the right to possession of the land, and the grantee to be the party obtaining the right to possession of the land.

Respectfully,

MARK MCELROY  
Attorney General