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RECORDER, COUNTY—INSTRUMENTS DEPOSITED FOR RECORD OR FILING, PUBLIC DOCUMENTS FROM INSTANT FILED—INSTANT FILED THEY ARE AVAILAVLE FOR INSPECTION BY PUBLIC—RECORDER MAY ADOPT REASONABLE RULES AND REGULATIONS, AS TO USE AND OCCUPANCY OF OFFICE AND EXAMINATION OF RECORDS.

SYLLABUS:

Instruments deposited with a couny recorder for record or filing are public documents and from the instant they are filed with the recorder they are available for inspection by the public under such reasonable rules and regulations as the recorder may adopt for the use and occupancy of his office and the examination of such instruments.

Columbus, Ohio, July 6, 1946

Hon. Charles Varner, Prosecuting Attorney
Ottawa, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The County Recorder of this county has asked me for an opinion as to allowing the inspection of chattel mortgages filed in his office which have not yet been placed upon the index, and also the rights of the public in regard to the inspection of various chattel mortgages and other instruments which have been filed in his office, but have not yet been recorded.

“The Recorder advises me that as the various instruments are presented in the office of the Recorder for filing or recording they are given a file number, then placed on the public record of conveyances, and then immediately placed on the desk of the typist in numerical order, and that various persons inspecting said instruments insist on taking them from the desk of the typist before they are on record and occupying one of the desks in the private office of the Recorder regardless of the interference which said acts cause to the proper functioning of the office of the Recorder.

“The Recorder also advises that he has experienced upon several occasions that when these parties return these instruments to the desk of the typist they were not in their numerical order which resulted in instruments being typed and recorded several weeks later than they should have been recorded.

“The Recorder advises that he maintains a filing cabinet for chattel mortgages which cabinet is kept under lock. Will you kindly advise me as to what inspections of instruments the Recorder should allow after the same are filed with him and before the same are recorded, and also especially as to chattel mortgages whether it would be proper to allow the public to inspect the chattel mortgage files unless the inspections were made in the presence of and under the supervision of the Recorder or one of his deputies.”

In order to protect the public and, in particular, persons interested in the title to and encumbrances upon both real and personal property, recording statutes for many years have been found essential. In *Brown v. Kirkman*, 1 O. S., 117, it was said:

“It is the object and purpose of a record to furnish notice to the world of the existence of titles and incumbrances, and when the record is made it is constructive notice to every body of what it contains, although no actual notice be had, and it is true that a record will only be considered as furnishing constructive notice when its examinations will furnish *actual* notice.”

Concerning the duties of the recorder, Section 2758, General Code, provides:

“Upon the presentation of a deed or other instrument of writing for record, the county recorder shall indorse thereon the date and the precise time of day of its presentation, and a file number. Such file numbering shall be consecutive and in the order in which the instrument of writing is received for

record, except chattel mortgages which shall have a separate series of file numbers, and be filed separately, as provided by law. Until recorded each instrument shall be kept on file in the same numerical order *for easy reference*, and, if required, the recorder shall, without fee, give to the person presenting it a receipt therefor, naming the parties thereto, the date thereof, with a brief description of the premises. When a deed or other instrument is recorded, the recorder shall indorse thereon the time when recorded, and the number or letter and page or pages of the book in which it is recorded." (Emphasis added.)

Section 2781, General Code, makes the recorder liable to suit on his bond for the use of an injured party if he "fails to index a deed or other instrument of writing, by the morning of the day next after it is filed for record; or neglects, without good excuse, to record a deed or other instrument of writing within twenty days after it is received for record."

Section 8561, General Code, furnishes the rules for determining the county in which each chattel mortgage must be filed.

The duties of the recorder are found in Section 8562, General Code, which reads as follows:

"The county recorder upon receiving such instrument shall endorse thereon the time of receiving it and its consecutive number, and enter in a book or on cards, (which shall be known as the chattel mortgage index) to be provided by the county, the names of all parties thereto, alphabetically arranged, with the number of the instrument, its date, the date on which it was so received, and the amount secured thereby as set forth in the sworn statement to be furnished therewith, which entry must be repeated, alphabetically, under the name of every party thereto. *He also shall file the instrument in his office to be there kept for the inspection of all persons interested*, unless deposited for recording under section 8563, General Code. In case said instrument is presented for refileing the officer receiving the same shall file, handle, number, index and treat it as an original filing. When any chattel mortgage so filed is refiled or, when a chattel mortgage, whether filed or recorded, is cancelled the date of such refileing or cancellation must be entered upon the margin of such chattel mortgage index opposite the original entry if not refiled; or opposite the last entry, if refiled." (Emphasis added.)

These statutes clearly show that recordable instruments, such as deeds, mortgages and chattel mortgages, when lodged with the recorder are public records. The recorder has not only the duties of consecutively numbering, dating and indexing such instruments, and preserving them by recording or filing, but he is required to have them available for "easy reference." They must be kept available "for the inspection of all persons interested."

There is a duty on all prospective purchasers and creditors to examine the records if they intend to purchase or rely upon the security of realty or chattels. Under the provisions of Section 8542, General Code, mortgages on real estate "take effect from the time they are delivered to the recorder of the proper county for record." Section 8543, General Code, provides that deeds and other instruments of conveyance shall be deemed fraudulent as to subsequent bona fide purchasers until "filed for record" in the office of the proper recorder. Similar provisions regarding chattel mortgages are found in Section 8560, General Code. Thus, we see that notice must be taken of all pertinent instruments filed with the recorder from the instant of filing.

The examination of the records must be made by the person interested or someone on his behalf. It is not the duty of the recorder to examine the records for him. In 1933 Opinions of the Attorney General, page 427, one of my predecessors held:

"The mortgagee of a chattel mortgage cannot require the county recorder to search the chattel mortgage files and make a statement as to the existence of prior liens upon property covered by a chattel mortgage deposited for filing, no such duty having been imposed upon the recorder by statute."

It would be most incongruous to say that interested persons at their peril must examine the records to the instant each of their transactions is consummated, but that such records, although public records, are unavailable until indexing and filing or recording has been completed and that the recorder is under no duty to make such search for such interested persons. In *Green v. Garrington*, 16 O. S., 549, it was said:

"For the purposes of the present question, the duties of the recorder may be considered of a twofold character: (1) such as he owes to mortgagees and grantees; and (2) such as he owes to third persons, having an interest in examining the records

with the view of ascertaining the condition of the title to particular property.

To the former class belongs the duty of receiving, receipting for, and duly recording conveyances presented for record; and to the latter class, the duty of affording to persons having occasion to examine, all the facilities provided by law for ascertaining the state of the title as it may exist of record. Of the means thus provided, is the duty of allowing the records to be examined, and of furnishing a correct index to aid in the examination. If an examination were denied, the desired information could not be obtained, although the index might be full and correct; and a like result would probably follow if an examination were allowed, but no index furnished."

While it is the duty of the recorder, in the conduct of his office, to make available for inspection all public records to persons having an interest therein so that they may ascertain the condition of the title to particular property, yet he is not obliged to have the routine of his office unnecessarily disturbed thereby. Reasonable rules and regulations may be adopted by the recorder with respect to the use and occupancy of his office and the examination of documents filed therein. 35 O. Jur., 95.

In conclusion and in specific answer to your request, it is my opinion that instruments deposited with a county recorder for record or filing are public documents and from the instant they are filed with the recorder they are available for inspection by the public under such reasonable rules and regulations as the recorder may adopt for the use and occupancy of his office and the examination of such instruments.

Respectfully,

HUGH S. JENKINS
Attorney General