

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-

taining 35 acres more or less. Excepting therefrom 20 acres and a road way off the south side of said lot heretofore conveyed by Jacob Smyers and Sarah J. Smyers to Rose Alexander.

Also the west half of Fractional Lot 1 in Section 25, same township and range aforesaid, containing 20 acres more or less.

Also a part of Fractional Lot 1 described as follows: Beginning at the northwest corner of said Fractional Lot as described in a deed made by Ed Sweet and wife to Henry Klinker; thence east along the north line of said lot about 37 rods to the public road; thence with said public road in a southwest direction to the west line of said Fractional Lot; thence north along said line about 55 rods to the place of beginning containing 7 acres more or less. Containing in all 42 acres more or less."

Upon examination of the abstract of title submitted I am of the opinion that said Amos A. Stoltz had a good and indefeasible fee simple title to the above described property at the time of his death and that he held this property free and clear of all encumbrances with the possible exception of a mortgage executed by one Wesley J. Poling to one Charles W. Imler under date of February 22, 1917. This mortgage which was one on the above described lands to secure the payment on a note in the sum of three hundred dollars due one year after the date thereof was not canceled of record at the time of the death of said Amos A. Stoltz. However, in the subsequent proceedings instituted by John M. White, as administrator of the estate of Amos A. Stoltz to sell this property to pay debts, said Charles W. Imler was made a party defendant to the said action and was served with summons therein. Inasmuch as in this action Imler did not, by answer and cross petition or otherwise, make any claim under this mortgage his rights thereunder as against this property was barred by order of the court and I am of the opinion that by reason of said proceedings instituted by said administrator the administrator's deed, which has been fully executed and acknowledged, will be effective to convey a full fee simple title in and to the above described property to the State of Ohio.

Encumbrance estimate No. 783, which likewise has been submitted for my examination, has been properly executed and approved and the same shows that there are sufficient balances in the proper appropriation account to pay the purchase price of this property which is the sum of two hundred and ninety-four dollars. It is likewise noted that the money necessary to pay the purchase price of this property has been released by the board of control.

I am herewith returning to you said abstract of title, warranty deed, encumbrance estimate No. 783, controlling board certificate and other files relating to the purchase of this property.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2248.

APPROVAL, ABSTRACT OF TITLE TO LANDS OF C. A. WATTS IN  
FRANKLIN TOWNSHIP, ADAMS 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, warranty deed and encumbrance estimate No. 135, relating to the pro-