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# THE NEW COLORADO CHATTEL MORTGAGE ACT

BY STEVE HELLERSTEIN\*

## GENERAL STATEMENT

The Legislature, at its session in 1961, approved a new Chattel Mortgage Act for Colorado.<sup>1</sup> This new act became effective on July 1, 1961. The provisions of the Inventory Mortgage Act<sup>2</sup> and the provisions of the Certificate of Title Act<sup>3</sup> are not affected by the new act. The enactment is designed to relate to general chattel mortgages and the existing statutes, the Inventory Mortgage Act and the Certificate of Title Act, govern the mortgaging of motor vehicles.

## ANALYSIS OF SECTIONS

Section 1. *Validity Against Third Persons.* This Section restates the provisions of the previous act which recites that a chattel mortgage is enforceable in Colorado against the rights and interest of third parties if the provisions of the act are complied with or, in the alternative, possession of the mortgaged property is delivered to and retained by the mortgagee.

Section 2. *Property Subject to Mortgage.* The new act permits the mortgaging of any kind or character of personal property including livestock, the natural increase thereof, immediate and remote; livestock feed notwithstanding the same may be consumed; crops, including fruits and berries, annual or perennial, which may be harvested within a period of one year next after the date of the execution of the mortgage, whether or not grown, growing or planted; household goods, providing each spouse signs the mortgage unless (1) the husband and wife are not residing together, or (2) the mortgage is a purchase money mortgage; after-acquired property; property not in existence or property to which title was not in the mortgagor at the time of the execution and delivery of the mortgage.

The new items added in the above section form the exemption of the purchase money mortgage of household goods from the necessity of the signature of both husband and wife where the purchase was made by either of them. This was law decided by the Colorado Supreme Court.<sup>4</sup> The placing of such language in the statute merely confirms the holding of the court.

The question of mortgaging after-acquired property or property not in existence or property to which title was not in the mortgagor, has been a controversial one in Colorado.<sup>5</sup> To lay at rest any questions of the rights of a mortgagee to take a valid mortgage upon the aforesaid property, appropriate language is contained in the new act. Obviously, the mortgage is not effective on such property until the same comes into being or the title of the property is acquired by the mortgagor.

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<sup>1</sup> Senate Bill 168, approved April 24, 1961.

<sup>2</sup> Colo. Rev. Stat. § 20-2-1 to 20-2-12 (1953).

<sup>3</sup> Colo. Rev. Stat. § 13-6-1 to 13-6-42 (1953).

<sup>4</sup> Welty v. Burks, 76 Colo. 365, 231 Pac. 660 (1924).

<sup>5</sup> Hellerstein, Chattel Mortgages in Colorado § 19 (5th ed. 1956).

Section 3. *Description.* Probably the most controversial and litigated problem in chattel mortgages has been the question of proper descriptions.<sup>6</sup> The new act provides that property may be described either specifically or in general terms. If in general terms, the location of the mortgaged property must be sufficiently fixed by the mortgage. Further, the identity of the mortgaged property may be shown by extrinsic evidence. Heretofore, general descriptions, even though the location of the security was stated, did not create a valid mortgage.

Section 4. *Filing or recording.* With "snap out" forms and combined notes and mortgages and other similar forms in use, a problem has arisen as to which instrument in the set used should be filed or recorded. The new act provides that either the original or duplicate original, or a copy thereof certified to be a true copy by a notary public or other officer authorized to take an acknowledgement, can be filed or recorded in the county where the property is situated. It is still necessary that the mortgage be filed or recorded in the county where the property is situated. However, a duplicate original may be filed, which overcomes the difficulty in using snap-out forms.<sup>7</sup>

Section 5. *Duration - Mortgage Status Statement.* A great deal of difficulty has arisen because extensions of mortgages were required to be filed within six months from date of maturity, and annual statements were required to be filed within a period of two years and ninety days after the date of the filing or recording of the mortgage when the maturity of the mortgage exceeded two years. Often two instruments had to be filed. In some instances where the mortgage exceeded the two year period (as to such mortgages annual statements were required) certain mortgages were just over the period by a few days, or by reason of adjustment in payments, the mortgage might run for two years and fifteen days. The mortgagee found himself in the position where he failed to file the annual statement but had filed the extension. As a result the lien would be lost when the rights of third parties intervened. The situation was confusing; in section 5 an attempt has been made to simplify the procedure.

Under the new act "Extensions" and "Annual Statements" are both eliminated. A new form will be used designated as a "Mortgage Status Statement." The requirements for filing of the statement are as follows:

1. If a mortgage is filed or recorded and the final maturity of the mortgage is *three years or less*, then the mortgage is enforceable until maturity and for a period six months thereafter. A Mortgage Status Statement must be filed

<sup>6</sup> *Id.* ch. IV.

<sup>7</sup> *Form of Mortgages.* The new act does not change the form of chattel mortgages to be used. The forms presently in use, if in conformity with the former Chattel Mortgage Act, may be used under the new act.

*Recording and Filing Fees.* The act is silent as to fees required to be paid to the clerk and recorder for recording or filing mortgages or Mortgage Status Statements. Under the general Colorado laws relating to filing, Colo. Rev. Stat. § 56-4-3 (1953), filing fees, unless otherwise fixed specifically by statute, are seventy-five cents for each instrument. Hence, fees required for the filing of a mortgage or Mortgage Status Statement will be seventy-five cents. Where more than one mortgagee or more than one mortgagor are involved, usually the clerk and recorder receives an additional fifteen cents for each additional name shown. Recording fees will be governed by the general statute relating to recording. The clerk and recorder will charge for recording instruments \$1.25 per page plus an additional fifteen cents where there is more than one mortgagee or mortgagor.

within a period of six months *after the maturity date of the mortgage* to continue the lien in effect. Thereafter, successive Mortgage Status Statements must be filed (to continue the validity of the mortgage) annually within a period of six months from the anniversary of filing the first Statement.<sup>8</sup>

2. If the final maturity of the mortgage is more than three years, then such mortgage is valid and enforceable for the full period thereof, provided that within a period of six months after three years from the *date of the mortgage* a Mortgage Status Statement is filed. Thereafter successive annual Mortgage Status Statements must be filed within six months from each anniversary date of the filing of the first Status Statement to continue the validity of the mortgage.<sup>9</sup>

If a Mortgage Status Statement is not filed when required, such failure does not effect the validity of the mortgage if third persons have not acquired rights during the period when the statement should have been filed. The mortgage will be considered in force against third persons when the statement is filed, even though the filing is late.

The form of the Mortgage Status Statement is simple. The information therein to be contained is provided by this section of the act and a copy of a suggested form is set out below.

The Mortgage Status Statement may be executed by the mortgagee or his assignee or by an agent or attorney for the mortgagee or assignee. The mere designation of the party showing his capacity in executing the statement is taken as sufficient evidence of his authority.

If a mistake is made in the Mortgage Status Statement as to the amount due, such fact does not invalidate the statement.

<sup>8</sup> For example: If a mortgage is dated Jan. 2, 1961 and has a maturity of one year (less than three years) i.e., Jan. 2, 1962, then within six months from Jan. 2, 1962 (being the maturity date) the first Mortgage Status Statement is required to be filed. Assuming the first Mortgage Status Statement is filed on July 1, 1962, then within a period of six months from July 1, 1963 and annually thereafter within a period of six months from each anniversary date of filing the first statement, successive Mortgage Status Statements must be filed to continue the validity of the mortgage.

<sup>9</sup> If a mortgage has a maturity of five years (in excess of three years) then commencing within three years and six months from the original date of the mortgage, the first Mortgage Status Statement must be filed; thereafter annually within six months from the anniversary date of the filing of the first Mortgage Status Statement, successive statements must be filed. By filing Mortgage Status Statements the validity of the mortgage is maintained even after maturity of the mortgage.

To illustrate, if a mortgage is dated Jan. 2, 1961 with a maturity of Jan. 2, 1966, the first Statement must be filed between Jan. 2, 1964 and July 2, 1964. Assuming the first Mortgage Status Statement is filed March 15, 1964 then within six months from March 15, 1965 and annually within six months from each March 15 thereafter, successive statements must be filed.

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Section 6. *Future Advances.* The new act continues the future advance provisions contained in the former act. The new act more clearly states what was intended by the old act and no change in substance is effected. A mortgagee taking a future advance mortgage, follows the statute by reciting the specific sum to be advanced as the maximum, the date prior to which advances shall be completed, and the date on which the last installment of the indebtedness secured thereby shall mature. The advances may be made and repaid again so long as the aggregate amounts of such advances owing at any time do not exceed the specific amount recited to be secured as a maximum by the mortgage.

Section 7. *Purchaser with Actual Notice.* The section continues the provisions of the former act which recites that any person who obtains an interest in any personal property covered by a mortgage which is valid and effective between the parties, with actual notice of such mortgage, acquires such interest as though the mortgage was filed or recorded as required by the act.

Section 8. *Validity between Parties.* This section continues the effect of the former act, namely, that a chattel mortgage is good between the parties until the debt is paid or barred by the statute of limitations.

Section 9. *Corporation Trust Deed or Mortgage.* Under the former provision of the Chattel Mortgage Act it was provided that a corporation executing a mortgage or trust deed upon realty and including personal property therein effected a lien upon the personal property without the necessity of complying with any provisions of the Chattel Mortgage Act. This provision is continued except that under Section 11 of the new act, it is now provided that a corporate trust deed or mortgage containing real and personal property therein shall be indexed by the clerk and recorder as a chattel mortgage as well as under the real property indices. As a result, an examiner of the chattel mortgage indices will be able to obtain such information. This should lead to less problems in connection with corporation trust deeds and mortgages containing both personal and real property as security.

Section 10. *Acknowledgment.* This section continues the former act in that there is no mandatory provision that mortgages be acknowledged. If acknowledged, however, and of record, such instrument may be admitted in evidence without the necessity of proof of execution.

Section 11. *Recorder to Keep Index Records - Releases.* The same provisions as heretofore in effect with reference to the clerk and recorder keeping indices as to chattel mortgage of record are retained. Mortgages may be released by separate instruments or by an appropriate notation on the chattel mortgage index.

Section 12. *Search of Records - Fees.* This section continues the former act permitting a mortgagee to obtain information as to existing mortgages by having the County Clerk and Recorder make a search for \$2.00 for the first year and \$0.50 for each year thereafter.

Section 13. *Sale of Mortgaged Property.* This section continues the provisions of the former act that a person who sells mortgaged property to a third person without informing him of the fact of

the mortgage shall forfeit and pay to the purchaser twice the value of the property sold together with costs and attorneys fees.

Section 14. *Larceny of Mortgaged Property.* This section provides that if a mortgagor during existence of the mortgage sells, transfers or encumbers mortgaged property he shall be guilty of larceny and makes it a criminal offense unless at the time of the making of such sale or transfer or encumbrance the mortgagor fully advises the person to whom such sale or mortgage was made of the fact of the prior encumbrances and also fully advises the mortgagee of the intended sale giving such mortgagee the name and place of residence of the party to whom the sale, transfer, or encumbrance was made. This substantially continues in effect the former act.

Section 15. *Concealment Or Removal of Mortgaged Property.* This section continues the previous section of the act which makes it a criminal offense (larceny) for a mortgagor or person, with actual knowledge of a chattel mortgage during the existence thereof, to conceal or remove mortgaged property from the State of Colorado without the consent of the mortgagee.

Section 16. *What Transfers Have Effect of Chattel Mortgages.* This section continues the provisions of the former act which provides that regardless of the form of the instrument used if the instrument was intended to be a chattel mortgage or lien upon personal property, it will be construed as a chattel mortgage and will be subject to the provisions of the act.

Section 17. *Aircraft Mortgage.* This is a new section. Heretofore, the method of taking chattel mortgages on aircraft was in doubt. It was not clear whether compliance should be made with the laws of the United States or the laws of Colorado or both in order to have an effective mortgage on aircraft. Throughout the country there has been a diversity of opinion as to proper requirements and where filing or recording should be made. In order to set at rest such controversy the present act provides that the filing or recording of aircraft mortgages in accordance with the laws of the United States are sufficient in itself without necessity of compliance with the provisions of the Colorado chattel mortgage act.

Section 18. *Application of Act.* This section provides that the Colorado Inventory Mortgage Act and Certificate of Title Act are not affected by the new Chattel Mortgage Act.

Section 19. *Repeal.* The old Chattel Mortgage Act is repealed by the new act.<sup>10</sup> It is to be noted that this section specifically provides that the provisions of the new act relating to filing or recording of instruments to continue the validity and enforceability of a mortgage are applicable to existing mortgages. This fact is important in that after July 1, 1961 extensions and annual statements under the old act will be discontinued and the new law followed. Records should be set up for filing the Mortgage Status Statements when required.<sup>11</sup>

<sup>10</sup> Colo. Rev. Stat. § 20-1-1 to 20-1-20 (1953).

<sup>11</sup> To illustrate, assuming that a mortgage was dated July 2, 1959, to mature July 2, 1964. Under the old law, assuming the mortgage was filed on July 2, 1959, it would be necessary to file the annual statement within a period of ninety days from July 2, 1961. Since the new law will be in effect July 1, 1961, the Mortgage Status Statement must be filed within a period of three years and six months from the date of the mortgage, namely, six months from July 2, 1962. Thereafter, annually, statements will be required to be filed in the manner and the times hereinbefore stated.

Section 20. *Securability Clause.* This is merely a standard clause with relation to constitutionality.

APPENDIX

A SAMPLE MORTGAGE STATUS STATEMENT

Pursuant to the provisions of Section 5, Senate Bill 168 approved April 24, 1961, the undersigned does hereby make, execute and file the following Mortgage Status Statement:

(1) Name and address of Mortgagor (s):

-----  
Name(s)  
-----  
(Street Address) (City) (State)

(2) Name and address of Mortgagee (s)

-----  
Name(s)  
-----  
(Street Address) (City) (State)

(3) Date of filing or recording of mortgage: \_\_\_\_\_

(4) Filing Number if mortgage filed, or book and page if mortgage recorded:

Filing No. \_\_\_\_\_ Book \_\_\_\_\_ Page \_\_\_\_\_

(5) Balance due on Mortgage \$ \_\_\_\_\_

DATED \_\_\_\_\_, 196\_\_\_\_\_

\_\_\_\_\_, Mortgagee\* - Assignee\*

By \_\_\_\_\_

\* Delete "Assignee" if inapplicable

\*\* Indicate authorized signature such as officer of corporation, agent or attorney.

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