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## Certificate of Title Law Effective August 1st

by LOUIS A. HELLERSTEIN  
*of the Denver Bar*

The Colorado Certificate of Title Act relating to all vehicles propelled by power (other than muscular power), trailers, semi-trailers and trailer coaches (H. B. No. 808) was approved April 16, 1949 and becomes effective August 1, 1949. Under its provisions, new titles are required when a motor vehicle is transferred or mortgaged. The administration of the act is under the Director of Revenue.

In the main, the bill is designed to strengthen Colorado titles, and to have a proper evaluation of a title before the courts. Up to this time, generally, Colorado titles were primarily a measure of protection against thefts, so as to evidence the ownership and, in addition, to tie in a title with the licensing provisions so that the counties and the state could obtain revenue therefrom. The attempt of the present bill is to require a title at all times, which evidences ownership. A purchaser that does not obtain a title endorsed to him acquires no right under the present law. Previously possession of the motor vehicle and payment of a consideration therefor were sufficient, even though for registration purposes a title was required.

### **The Law's Salient Features**

In addition, the vital parts of the bill are as follows:

1. All chattel mortgages upon motor vehicles from and after August 1, 1949, the effective date of the act, will appear upon a title. If a motor vehicle title is presented to a loan or finance company showing no mortgage thereon, it will be presumed such motor vehicle is unencumbered.

This situation is contrasted to the situation prior to the effective date of the new title law, pursuant to which mortgages were filed with the clerk and recorders of the various counties. There being 63 counties in Colorado, hopeless confusion resulted, since to be sure of ascertaining that no prior mortgages existed, all counties where a mortgagor resided would have to be searched. Secondly, there was no requirement that a mortgage be noted on a title, and thirdly, after a title was once issued, there was no means of placing a notation as to the lien upon the title. As a result, it can be seen that the title act will be of tremendous value to holders of mortgages.

2. Foreign mortgages; that is instruments executed having the effect of liens or mortgages upon automobiles brought into Colorado at a subsequent date, will be recognized, under the new title act, if such liens or instruments are noted on the title by the proper authority of a foreign state.

Under the present law, regardless of notation on titles of liens or mortgages, or the recording in a foreign state, a chattel mortgage made in a foreign state is recognized in Colorado, but a conditional sales contract even though recorded in a foreign state is not now recognized.

The new law should give equal protection of the law to holders of chattel mortgages as well as conditional sales contracts executed in foreign states.

### **Mechanics of Filing Mortgages**

The act provides the following method of filing a mortgage:

1. The holder of a chattel mortgage presents his chattel mortgage for filing, together with the certificate of title (or, if a new car, the original bill of sale) covering the motor vehicle, to the authorized agent of the Director (either the County Clerk and Recorder if outside Denver, or, in Denver, the Manager, of Revenue), and requests that a new title be issued, showing the mortgage on the title.

2. Filing and recording are made in the county (or city and county) where the motor vehicle is licensed and registered, regardless of the place of residence of the mortgagor or where the motor vehicle is to be kept.

3. The authorized agent makes a certificate to be attached or stamped on the mortgage and on the certificate of title, in which is shown the day and hour on which the mortgage was filed, together with other pertinent information relative to the mortgage.

4. The authorized agent files and indexes the mortgage separate and apart from other instruments.

5. Within forty-eight hours after filing, the authorized agent is required to mail to the Director of Revenue the certificate of title (or if a new car, the bill of sale) on which he has affixed his certificate respecting the filing of the mortgage.

6. The Director, upon receiving the certificate of title (or bill of sale) with the certificate showing the mortgage, notes such fact upon his records. The Director then issues a new certificate of title showing the mortgage on the title. The certificate of title is then mailed to the holder of the mortgage.

7. The original mortgage, or an executed copy thereof, may be filed with the authorized agent. There is no provision for recording such mortgages. The agent retains the instrument filed.

8. *Second or junior mortgages are handled in the following manner:* such second or junior mortgagee files his mortgage in the same manner as the holder of the first mortgage, excepting that he does not file the title, since the title will be held by the holder of the first mortgage. Upon the filing of such mortgage, the authorized agent notes

the fact of filing and delivers a receipt therefor showing the filing. The authorized agent then, by registered mail, return receipt requested, notifies the holder of the certificate of title to forward the same to him so that notation of the second or junior mortgage may be made thereon. The holder of a title is given fifteen (15) days to forward the title to the agent. Upon receipt of the title, the agent notes the fact of the second or junior mortgage thereon and forwards the instruments in the same manner as that of a first mortgage to the Director, who issues a new title, showing the second or junior mortgage. The title is then returned to the holder of the first mortgage. If the holder of the title fails to send the title in when requested to do so by the agent, he becomes liable for any damages which the holder of a second or junior mortgage may sustain as a result of such mortgage not appearing upon the title.

9. Liens upon motor vehicles have priority according to the time of being filed for record.

#### **Validity of Lien May Be Extended**

A mortgage is a valid lien for a period of three years from and after filing. Thereafter, if unpaid, the lien of the mortgage may be extended for successive two-year periods by the holder of the mortgage presenting the certificate of title, on which the mortgage is noted, to the authorized agent with a request for an extension. The authorized agent then notes the extension on the title and forwards the same to the Director. The Director also notes the extension on his records and the certificate of title and returns the same to the holder of the mortgage.

A mortgage which has been filed for record, as provided under the act, and noted on the certificate of title, which has not been released or extended within three years from the date of the filing of the mortgage, is considered as having been paid and a duplicate title may be issued omitting therefrom reference to the mortgage.

The act does not attempt to in any manner affect the validity of mortgages between the parties as long as the rights of third parties have not intervened. A mortgage which is not shown on the certificate of title as provided for by this act, duly executed from and after the effective date of this act, is still valid and enforceable between the parties and also valid and enforceable against third parties who have actual knowledge of the mortgage. This is the law at the present time, and the new Certificate of Title Act does not attempt to change the existing law.

Upon a mortgage being released, an application for a new title is made by the owner, or a purchaser or transferee from the owner, or the holder of the mortgage, pursuant to which the authorized agent notes the release upon the title and forwards the same to the Director, who issues a new title omitting therefrom said mortgage. Thereupon, such new certificate of title is issued

and mailed to the owner, if all mortgages have been released, or to the holder of any existing first lien thereon.

### **Mechanics Liens Not Affected**

The act does not change the existing law relative to claims of garagemen or mechanics for lien claims. If a chattel mortgage is taken when a motor vehicle is in a repair shop being repaired, the fact that a certificate of title shows a mortgage does not render a mechanics lien claim inferior to the rights of the mortgagee. However, if the certificate of title shows a mortgage which was in effect prior to a motor vehicle being repaired, or in a shop for repair, the claim of the mortgagee is superior. The law relative to the respective rights of mechanics lien claimants and mortgagees is not affected by the enactment of the Certificate of Title Act. Mechanics lien claims are not required to be shown upon the certificate of title.

Chattel mortgages which were taken prior to the Certificate of Title Act continue unimpaired, and the chattel mortgage law in effect at the time the mortgages were taken apply to such chattel mortgages. Releases and extensions of such chattel mortgages should be filed in the same manner as heretofore under the existing law.

Generally, chattel mortgages, or instruments having the effect of chattel mortgages, executed in a foreign state will be recognized in Colorado, as against the rights of innocent third persons having no knowledge thereof, if the foreign certificate of title for such motor vehicle, issued under the laws of any other state, bears a notation on such title of the existence of such foreign mortgage.

The act does not affect or change the form of chattel mortgages nor the requirement of acknowledgement, nor does it change the present law or rights of the parties relative to foreclosure, or any other rights or remedies the holder of a mortgage may have. The substantive law covering these subjects is still in force and effect and will govern mortgages taken under the new Certificate of Title Act.

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