



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

June 11, 1982

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 82-127

Susie Parmer
Register of Deeds
Leavenworth County Courthouse
Fourth and Walnut
Leavenworth, Kansas 66048

Re: . Taxation--Mortgage Registration Fee--Instruments Not
Subject Thereto; Pledge of Real Estate Mortgages and
Notes

Synopsis: An instrument, by which several promissory notes and
real estate mortgages securing thoses notes are assigned
to a lending institution for the purpose of securing
a loan, is not itself a mortgage of real property.
It is a mortgage of intangible personal property.
Thus, any such instrument should be filed together
with other instruments that create liens on personal
property.

However, if the instrument is proved or acknowledged,
and certified in accordance with the provisions of
K.S.A. 58-2211 to K.S.A. 58-2219, inclusive, the
instrument also may be recorded in the real estate
records. Since such instruments are not mortgages
of real property, said instruments may be filed
without payment of the mortgage registration fee.
Cited herein: K.S.A. 58-2211, 58-2219, 58-2221,
K.S.A. 1981 Supp. 84-9-401.

*

*

*

Susie Parmer
Page Two

Dear Mrs. Parmer:

You have sent us an instrument entitled "Pledge and Assignment" and asked whether the instrument should be filed in the personal property lien files or in the real estate files, and whether a mortgage registration fee should be collected before the instrument is received and filed of record.

The instrument, in part relevant to your inquiry, provides:

"FOR VALUE RECEIVED, the undersigned hereby pledges and assigns to MGIC Indemnity Corporation ('MGIC') as security for a guaranty of a loan of money, its entire right, title, and interest in and to the mortgages identified in Schedule A, attached hereto and incorporated herein by reference,

"TOGETHER WITH, each Note secured by a mortgage described in Schedule A, the money due or to become due thereon with interest as specified therein, and all rights accrued or to accrue under each such Note and Mortgage."

There is no question this instrument is a mortgage. There is a question, however, whether it is a mortgage of real property.

A review of the instrument indicates the property pledged as security consists of several notes and the real estate mortgages given to secure those notes. The notes clearly are not real property, but are the mortgages of real property, themselves, real property? We think not.

In 59 C.J.S., Mortgages, §195, it is stated:

"A mortgage of real property is not itself real property, but is personal property, it being considered in some states as a mere chose in action. So too, for most purposes, the right or interest of the mortgagee under the mortgage is regarded as personal property or a chattel interest, not rising to the dignity of an interest in land, at least in jurisdictions wherein the common law doctrine of mortgages has been abrogated and a mortgage is deemed to be a mere lien or security." (Emphasis added.) Id. at 251.

Susie Parmer
Page Three

In Mid-Continent Supply Co. v. Hauser, 176 Kan. 9 (1954), the Kansas Supreme Court said:

"It is recognized in this state that a mortgage is a mere security in the hands of the mortgagee, and does not convey any interest in the land itself." Id. at 15.

Also, in Motor Equipment Co. v. Winters, 146 Kan. 127 (1937), the Court said:

"In this state a real-estate mortgage transfers no legal title. That title remains in the mortgagor. In this state a mortgage is merely security for a debt. Irrespective of what it may be called, if it is in fact security for a debt, it is a mortgage and nothing else. (Benson v. Rosebaugh, 128 Kan. 357, 278 Pac. 41; Robinson-Patterson Coal Co. v. Morgan, 130 Kan. 679, 288 Pac. 555.)" (Emphasis added.) Id. at 135.

Given these statements of the Court, we have no hesitancy in concluding that these mortgages of real property are not, themselves, real property. Instead, they are mere securities, intangible personal property.

Under this instrument, a lien upon personal property is being given. Therefore, this instrument should be filed together with other instruments that create liens on personal property. In other words, this instrument should be treated the same as any other instrument that creates a lien upon personal property. The secured party should review the provisions of K.S.A. 1981 Supp. 84-9-401, to determine the proper office in which to file this financing statement in order to perfect its security interest.

However, this instrument is such that "real estate may be affected" thereby, and thus, under K.S.A. 58-2221, if the instrument is proved or acknowledged, and certified in accordance with the provisions of K.S.A. 58-2211 to 58-2219, inclusive, the instrument also may be filed in the real estate records. Moreover, since the instrument is not a mortgage of real property, if it is tendered

Susie Parmer
Page Four

for filing in the real estate records, no mortgage registration fee is due. Only filing fees would have to be paid.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:ta