

Opinion No. 62-12

January 22, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A. Donnelly, Assistant Attorney General

TO: Reuben E. Nieves, Assistant District Attorney, Ninth Judicial District, Clovis, New Mexico

QUESTION

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Since Sections 61-8-1 through 61-8-14, N.M.S.A., 1953 Compilation, dealing with chattel mortgages, have been repealed, will the filing and releasing fees contained in the provisions of Sections 50A-9-401 through 50A-9-407, N.M.S.A., 1953 Compilation, control in the releasing of instruments previously filed before the repeal of the above statutes, or must the provisions of Section 71-1-10, N.M.S.A., 1953 Compilation, be adhered to?

CONCLUSION

See Analysis.

OPINION

ANALYSIS

Under the question posed by you above, it is necessary to consider three separate situations which may confront County Clerks or the Secretary of State, as filing officers, in assessing the proper filing fee for such instruments. These three situations are:

1. Where the chattel mortgage has been filed with the County Clerk prior to January 1, 1962, and is sought to be released after the effective date of the Uniform Commercial Code;
2. Where chattel mortgages are entered into and executed prior to January 1, 1962, but are sought to be filed with the County Clerk after the effective date of the Uniform Commercial Code; and
3. Chattel mortgage transactions entered into and executed after the effective date of the Uniform Commercial Code.

Under the first situation posed above, this office has recently held in Attorney General's Opinion No. 62-2, dated January 3, 1962, that the correct fee to be charged by a clerk

for satisfying a chattel mortgage recorded prior to the effective date of the Uniform Commercial Code and which is sought to be released after the effective date of the Code is \$ 0.25. A copy of this opinion is enclosed herewith for your reference.

In regard to the second situation raised above, where a chattel mortgage is entered into by the parties and executed prior to the date of January 1, 1962, but which is offered for filing with the County Clerk or Secretary of State after the effective date of the Uniform Commercial Code the proper filing fee for such instruments would be the fee specified under the provisions of Section 61-8-6, N.M.S.A., 1953 Compilation. This section provides in part:

"The County Clerk shall collect, in advance, for the filing and entry of a chattel mortgage, the sum of fifty cents (\$.50), and for the filing and entry of an assignment of a chattel mortgage by separate instrument or of an affidavit in lieu of an assignment, the sum of twenty-five cents (\$.25) for the filing and entry of a certificate of satisfaction of a chattel mortgage or conditional sales contracts, the County Clerk shall collect the sum of twenty-five cents (\$.25) . . ."

The above section was repealed by the Uniform Commercial Code (Section 10-102, Chapter 96, Laws of 1961); however, by virtue of the provisions of subsection (2) of Section 10-102, Chapter 96, Laws of 1961, all transactions validly entered into before the effective date of the Uniform Commercial Code may be completed, consummated, and enforced according to such law governing such transactions as of the time of the valid execution of the instruments.

Section 10-102 (2), Chapter 96, Laws of 1961 provides in part as follows:

"(2) Transactions validly entered into before the effective date specified in Section 10-101 (50A-10-101) and **the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this act as though such repeal or amendment had not occurred.**" (Emphasis supplied).

In addition, Section 10 - 101, Chapter 96, Laws of 1961, specifies:

"This act shall become effective at midnight on December 31st following its enactment. **IT applies to transactions entered into and events occurring after that date.**" (Emphasis supplied).

Under the above cited statutory provisions it is evident that the provisions of the Uniform Commercial Code are not applicable as to transactions completed or entered into before the effective date of the Code, but such are governed by the provisions of the former law even though repealed or amended by the Code. **Paramount Paper Products Co. v. Lynch**, 128 A. 2d. 157, 182 Pa. Super 504; **McGinn v. Connolly**, 6 Pa. D&C 2d.382; **Alwine v. Erb**, 11 Pa. D&C 2d. 279, 68 Dauph Co. 161.

Therefore, if the chattel mortgage is entered into and executed prior to January 1, 1962, but if filed after the effective date of the Code, the provisions of the former statute, Section 61-8-6, N.M.S.A., 1953 Compilation, is controlling as to the proper filing fee chargeable. In determining the proper filing fee for such instruments the filing officers should look to the date of execution of such instruments.

Under the third situation stated above, and which is raised by your inquiry, for any chattel mortgage which is validly entered into and executed after the effective date of the Uniform Commercial Code, and which is filed with a filing officer as a security agreement pursuant to the provisions of Section 50A-9-402, N.M.S.A., 1953 Compilation, the proper fee for releasing such instrument is \$ 1.00.

Section 50A - 9 - 406, N.M.S.A., specifies that:

"A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be \$ 1.00."

Under Section 50A-9-406, supra, it is optional with the secured party whether or not such statement of release is filed. However, under the provisions of Section 50A-9-404, N.M.S.A., 1953 Compilation, it is obligatory on the part of the secured party whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise to give value, and upon written demand of the debtor, that the secured party send the debtor a termination statement, indicating that the creditor no longer claims a security interest under the financing statement and which financing statement shall be identified by a file number.

Section 50A - 9 - 404, N.M.S.A., 1953 Compilation, specifies that the uniform fee for filing and indexing such termination statement is \$ 1.00. This Section also specifies that "If the affected secured party fails to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure.

Section 71-1-10, N.M.S.A., 1953 Compilation designates the recording fees chargeable by the County Clerks for recording specific instruments. Under the provisions of the Uniform Commercial Code, all instruments required or permitted to be filed thereunder have designated filing fees, and the provisions of the Uniform Commercial Code as to such fees are controlling.

It should be noted that in lieu of a financing statement designated under Section 50A-9-402, N.M.S.A., 1953 Compilation, a security agreement may be filed which substantially complies with the requisites prescribed in such section.

As pointed out in our prior Attorney General's Opinion No. 62-1, dated January 3, 1962, under the Uniform Commercial Code the traditional security devices such as conditional sales contracts, chattel mortgages, and other contractual agreements intended to create a security interest in personal property or fixtures, are not abolished. However, even though such traditional forms may be continued to be used, such must substantially comply with the requirements of the Uniform Commercial Code which are now controlling.

Thus, dependent upon which of the three situations presented above occur, the filing fees for filing or releasing chattel mortgages and which are chargeable by the filing officers would be governed by the date when such transactions were entered into and executed by the parties thereto, and the proper fees would be those specified hereinabove.