

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 10
MORTGAGE OF REAL PROPERTY

45-1001. WHAT MAY BE MORTGAGED. Any interest in real property which is capable of being transferred may be mortgaged.

[(45-1001) R.S., sec. 3375; reen. R.C. & C.L., sec. 3403; C.S., sec. 6370; I.C.A., sec. 44-901.]

45-1002. INDEPENDENT DEFEASANCE TO BE RECORDED. When a grant of real property purports to be an absolute conveyance, but is intended to be defeasible on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees, or persons having actual notice, unless an instrument of defeasance, duly executed and acknowledged, is recorded in the office of the county recorder of the county where the property is situated.

[(45-1002) R.S., sec. 3376; reen. R.C. & C.L., sec. 3404; C.S., sec. 6371; I.C.A., sec. 44-902.]

45-1003. ACKNOWLEDGMENT AND RECORDATION. Mortgages, and deeds of trust or transfers in trust of real property may be acknowledged or proved, certified and recorded, in like manner and with like effect as grants and conveyances thereof.

[(45-1003) R.S., sec. 3377; reen. R.C. & C.L., sec. 3405; C.S., sec. 6372; I.C.A., sec. 44-903; am. 1957, ch. 181, sec. 22, p. 345.]

45-1004. RECORDING MASTER FORMS -- INCORPORATION OF PROVISIONS INTO MORTGAGES BY REFERENCE -- RECORDING FEES. (1) An instrument containing a form or forms of covenants, conditions, obligations, powers, and other clauses of a mortgage or deed of trust may be recorded in the office of the county recorder of any county, and the recorder of such county, upon the request of any person, on tender of the lawful fees therefor, shall record the same. Every such instrument shall be entitled on the face thereof as a "Master form recorded by ... (name of person causing the instrument to be recorded)." Such instrument need not be acknowledged or proved or certified to be entitled to record.

(2) When any such instrument is recorded, the recorder shall index it under the name of the person causing it to be recorded in the manner provided for miscellaneous instruments relating to real property.

(3) Thereafter any of the provisions of such master form instrument may be incorporated by reference in any mortgage or deed of trust of real property situated within this state, if such reference in the mortgage or deed of trust states that the master form instrument was recorded in the county in which the mortgage or deed of trust is offered for record, the date when and the book and page where such master form instrument was recorded, and that a copy of such master form instrument was furnished to the person executing the mortgage or deed of trust. The recording of any mortgage or deed of trust which has so incorporated by reference therein any of the provisions of a master form instrument recorded as provided in this section shall have like

effect as if such provisions of the master form so incorporated by reference had been set forth fully in the mortgage or deed of trust.

(4) Whenever a mortgage or deed of trust is presented for recording on which is set forth matter purporting to be a copy or reproduction of such master form instrument or part thereof, identified by its title as hereinabove provided and stating the date when it was recorded and the book and page where it was recorded, preceded by the words "do not record" or "not to be recorded," and plainly separated from the matter to be recorded as a part of the mortgage or deed of trust in such manner that it will not appear from a photographic reproduction of any page containing any part of the mortgage or deed of trust, such matter shall not be recorded; in such case the recorder shall record only the mortgage or deed of trust apart from such matter and shall not be liable for so doing, any other provisions of law to the contrary notwithstanding.

(5) For the purpose of any provision of law relating to fees for recording, entering or indexing, or relating to searches, furnishing of certified copies, reproduction, or destruction of records, or to any other matter pertaining to the powers and duties of recorders, except the manner of indexing thereof, the master form instrument herein provided for shall be deemed a conveyance.

[45-1004, added 1967, ch. 97, sec. 1, p. 206.]