

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 9
MORTGAGES IN GENERAL

45-901. MORTGAGE DEFINED. Mortgage is a contract excepting a trust deed or transfer in trust by which specific property is hypothecated for the performance of an act without the necessity of a change of possession.

[(45-901) R.S., sec. 3350; reen. R.C. & C.L., sec. 3388; C.S., sec. 6355; I.C.A., sec. 44-801; am. 1957, ch. 181, sec. 16, p. 345.]

45-902. MORTGAGE MUST BE IN WRITING. A mortgage, deed of trust or transfer in trust can be created, renewed or extended only by writing, executed with the formalities required in the case of a grant or conveyance of real property.

[(45-902) R.S., sec. 3351; reen. R.C. & C.L., sec. 3389; C.S., sec. 6356; I.C.A., sec. 44-802; am. 1957, ch. 181, sec. 17, p. 345.]

45-903. LIEN OF MORTGAGE IS SPECIAL. The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

[(45-903) R.S., sec. 3352; reen. R.C. & C.L., sec. 3390; C.S., sec. 6357; I.C.A., sec. 44-803.]

45-904. TRANSFERS DEEMED MORTGAGES. Every transfer of an interest in property other than in trust to secure the performance of any obligation of the trustor or other person named in the trust instrument, made only as a security for the performance of another act, is to be deemed a mortgage.

[(45-904) R.S., sec. 3353; reen. R.C. & C.L., sec. 3391; C.S., sec. 6358; I.C.A., sec. 44-804; am. 1957, ch. 181, sec. 18, p. 345; am. 1967, ch. 272, sec. 13, p. 745.]

45-905. DEFEASANCE MAY BE SHOWN BY PAROL. The fact that a transfer was made subject to defeasance on a condition may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a trustee under any trust deed or transfer in trust, or a subsequent purchaser or encumbrancer for value and without notice), though the fact does not appear by the terms of the instrument.

[(45-905) R.S., sec. 3354; reen. R.C. & C.L., sec. 3392; C.S., sec. 6359; I.C.A., sec. 44-805; am. 1957, ch. 181, sec. 19, p. 345.]

45-906. EXTENT OF MORTGAGE LIEN. A mortgage is a lien upon everything that would pass by a grant or conveyance of the property.

[(45-906) R.S., sec. 3355; reen. R.C. & C.L., sec. 3393; C.S., sec. 6360; I.C.A., sec. 44-806.]

45-907. SUBSEQUENT TITLE INURES TO MORTGAGEE. Title acquired by a mortgagor subsequent to the execution of the mortgage or by a grantor subsequent

to the execution of the trust deed inures to the mortgagee or trustee in like manner as if acquired before the execution.

[(45-907) R.S., sec. 3356; R.C. & C.L., sec. 3394; C.S., sec. 6361; I.C.A., sec. 44-807; am. 1957, ch. 181, sec. 20, p. 345.]

45-908. POWER OF ATTORNEY TO MORTGAGE. A power of attorney to execute a mortgage, or deed of trust must be in writing, subscribed, acknowledged, or proved, certified and recorded in like manner as powers of attorney for grants of real property.

[(45-908) R.S., sec. 3357; reen. R.C. & C.L., sec. 3395; C.S., sec. 6362; I.C.A., sec. 44-808; am. 1957, ch. 181, sec. 21, p. 345.]

45-909. RECORDING ASSIGNMENT OF MORTGAGE. An assignment of a mortgage may be recorded in like manner as a mortgage and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

[(45-909) R.S., sec. 3358; reen. R.C. & C.L., sec. 3396; C.S., sec. 6363; I.C.A., sec. 44-809; am. 1935, ch. 19, sec. 1, p. 37; am. 1967, ch. 272, sec. 14, p. 745.]

45-910. RECORD OF ASSIGNMENT NOT NOTICE TO MORTGAGOR. The record of the assignment of a mortgage is not of itself notice to a mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them, to the mortgagee.

[(45-910) R.S., sec. 3359; reen. R.C. & C.L., sec. 3397; C.S., sec. 6364; I.C.A., sec. 44-810.]

45-911. ASSIGNMENT OF DEBT CARRIES SECURITY. The assignment of a debt secured by mortgage carries with it the security.

[(45-911) R.S., sec. 3360; reen. R.C. & C.L., sec. 3398; C.S., sec. 6365; I.C.A., sec. 44-811.]

45-912. MARGINAL DISCHARGE OF MORTGAGE. A recorded mortgage may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the recorder, who must certify the acknowledgement in form substantially as follows:

"Signed and acknowledged before me this day of in the year of

"A.B., Recorder."

[(45-912) 1863, p. 528, sec. 36; R.S., sec. 3361; am. 1895, p. 54, sec. 1; reen. 1899, p. 249, sec. 1; reen. R.C. & C.L., sec. 3399; C.S., sec. 6366; I.C.A., sec. 44-812; am. 1967, ch. 272, sec. 15, p. 745.]

45-913. DISCHARGE OF MORTGAGE ON CERTIFICATE. A recorded mortgage if not discharged as provided in the preceding section, must be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representative or assigns, acknowledged or proved and certified as prescribed by the chapter on

recording transfers, stating that the mortgage has been paid, satisfied or discharged: provided, that whenever a bank or the person appointed to liquidate the affairs of a bank as provided in section [26-908](#), has failed or neglected to issue a certificate showing the release, discharge or satisfaction of a real mortgage, the director of the department of finance, or his successor in office, may, upon the request of the owner, or any subsequent owner, or party in interest, issue to such party his certificate showing such mortgage to have been paid, discharged or satisfied even though the affairs of said bank have been completely liquidated.

[(45-913) 1863, p. 528, sec. 37; R.S., sec. 3362; am. 1895, p. 54, sec. 2; reen. 1899, p. 249, sec. 2; reen. R.C. & C.L., sec. 3400; C.S., sec. 6367; I.C.A., sec. 44-813; am. 1945, ch. 91, sec. 1, p. 140; am. 1967, ch. 272, sec. 16, p. 745.]]

45-914. RECORD OF DISCHARGE. A certificate of the discharge of a real estate mortgage must be recorded, and a reference made in the record book to the book and page where the mortgage is recorded and in the minute of the discharge made upon the record of the mortgage to the book and page where the discharge is recorded.

[(45-914) 1863, p. 528, sec. 38; R.S., sec. 3363; reen. R.C. & C.L., sec. 3401; C.S., sec. 6368; am. 1927, ch. 128, sec. 1, p. 171; I.C.A., sec. 44-814; am. 1951, ch. 251, sec. 4, p. 540; am. 1959, ch. 72, sec. 4, p. 157; am. 1967, ch. 272, sec. 17, p. 745.]

45-915. MORTGAGE -- SATISFACTION -- FAILURE TO RELEASE OF RECORD -- PENALTY. When any mortgage, affecting the title to real property, has been satisfied, the holder thereof or his assignee must immediately, on the demand of the mortgagor, purchaser, or the successor in interest of either, execute, acknowledge, and deliver to him a certificate of the discharge thereof so as to entitle it to be recorded, or he must enter satisfaction or cause satisfaction of such mortgage or affecting the title to real property, to be entered of record; and any holder, or assignee of such holder, who refuses to execute, acknowledge, and deliver to the mortgagor, purchaser, or the successor in interest of either, the certificate of discharge, or to enter satisfaction, or cause satisfaction of the mortgage to be entered, as provided in this chapter, is liable to the mortgagor, purchaser, or his grantee or heirs, for all damages which he or they may sustain by reason of such refusal, and shall also forfeit to him or them the sum of \$100.

[(45-915) 1863, p. 528, sec. 39; R.S., sec. 3364; reen. R.C. & C.L., sec. 3402; C.S., sec. 6369; I.C.A., sec. 44-815; am. 1943, ch. 100, sec. 1, p. 194; am. 1967, ch. 272, sec. 18, p. 745.]

45-916. APPLICATION TO REAL PROPERTY ONLY. The provisions of this chapter shall apply to mortgages of real property only.

[45-916, added 1967, ch. 272, sec. 19, p. 745.]