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Comments

Louisiana Vehicle Certificate of Title Act¹

During the past few years the increased use of Louisiana as a "dumping ground" for stolen automobiles has been of growing concern to automobile dealers, lending institutions, and the general public. The reason for the practice was the inadequacy of Louisiana's vehicle registration laws, the ease with which vehicles could be registered and the complete freedom to transfer vehicles under our law, as compared to the more modern title laws in effect in most states.²

The efforts to remedy this situation culminated in the passage of Act 342 of 1950, the Louisiana Vehicle Certificate of Title Act. It became effective on December 15, 1950, and governs all transfers and mortgage transactions occurring on or after that date which involve motor vehicles subject to license under the motor vehicle licensing laws.³ Even if the vehicle is not sold or mortgaged after that date, application must be made for a certificate of title before July 1, 1951.

The Collector of Revenue is appointed Vehicle Commissioner and charged with the administration of the act. Although it is separate and distinct from the Vehicle Registration License Tax Law,⁴ the Vehicle Certificate of Title Act so closely parallels that statute that the two are administered together, the same forms serving as an application for title and for license.⁵

This combined administration will facilitate the accomplishment of a second purpose of the act: that of limiting the use of Louisiana as a source of "cheap license plates" by nonresidents to evade the more expensive registration taxes of their home states. Titles are to be issued only to bona fide residents of Louisiana and only the owner of the motor vehicle or his duly authorized agent may sign the application. A person residing per-

1. La. Act 342 of 1950 (La. R.S. [Supp. 1950] 32:701-734).

2. Thirty-four states have enacted vehicle title laws. The non-title states include Alabama, Connecticut, Georgia, Iowa, Kentucky, Massachusetts, Minnesota, Mississippi, New Hampshire, New York, Rhode Island, South Carolina, Tennessee, and Vermont.

3. La. Vehicle Registration License Tax Law, La. R.S. (1950) 47:451-47:540.

4. See note 3, *supra*.

5. Department of Revenue, Motor Vehicle Division, Form Veh. 1 for automobiles and Form Veh. 2 for trucks and trailers.

manently in Louisiana but temporarily out of the state may secure a title by furnishing a notarial statement attesting to his Louisiana residence. Servicemen who were residents of Louisiana at the time of entering the service are required to have a certificate to that effect from their commanding officers. A non-resident owner of a motor vehicle which will be primarily used in this state may obtain a Louisiana title for such vehicle by attaching to the application a sworn statement giving his legal address, the place where the motor vehicle will be principally located and a reasonable explanation for the difference between his address and that of the motor vehicle.

The only instance in which licenses will be issued without an accompanying application for title is when a vehicle is required to be licensed in both Louisiana and another state. However, even then, a Louisiana title will not be issued for such a vehicle unless the owner is a resident of this state or unless the vehicle is used primarily in this state.

The Commissioner of Vehicles, in exercise of his authority under the act, has promulgated rules and regulations setting out the procedure for titling vehicles and recording chattel mortgages and the evidence which must accompany each application. It is impossible, either in those rules and regulations or in an article of this length, to anticipate and deal separately with all of the different situations involving the exchange and mortgaging of automobiles.

Since the title to be issued is for the most part a photostatic copy of the application it is important that the application be prepared as neatly as possible, preferably printed in ink or type-written.

If the vehicle was previously registered in the applicant's name in this state, a sworn application showing such registration number will be sufficient. Where the vehicle was last registered in a title state⁶ in the present applicant's name, the application must be accompanied by his Certificate of Title and the latest registration certificate from that state. For a vehicle previously registered in a non-title state, the applicant must furnish his registration certificate together with all unexpired license plates, seals, certificates, and other evidence of foreign ownership. In addition, unless that information appears in the evidence of foreign registration surrendered, he must submit a sworn state-

6. See note 2, *supra*.

ment showing that the time and place of the last registration, as well as the name and address of the governmental office, agency, or authority making it, and, if known, the time and place of the original registration.

If the vehicle to be titled is a new vehicle⁷ the applicant must submit a notarized bill of sale and an invoice from the dealer. If the vehicle has been the subject of inter-dealer transactions, a notarized bill of sale covering each such transaction must be furnished.

Where the vehicle was previously registered in another's name in Louisiana or in any other title state⁸ and has not come into the possession of the applicant through a Louisiana dealer, a Certificate of Title and Registration Certificate both duly endorsed by the former owner must be attached to the application. If the vehicle was previously registered in a non-title state, the same evidence is required as if the registration had been in the applicant's name in the non-title state and, in addition, a duly assigned and endorsed registration certificate. Any purchaser or transferee, with the exception of dealers, must in all cases file an application for title within five days after the delivery of the vehicle.

Dealers⁹ need not apply for title for any vehicle acquired for stock purposes. Instead, they may execute a resale and reassignment of the title which they received when purchasing the vehicle. For a vehicle previously registered in another's name and acquired from a Louisiana dealer who had it in stock prior to December 15, 1950, a notarized bill of sale and an invoice from the dealer with such other evidence of ownership as he may possess is all that is required. This is designed to allow dealers to dispose of stock on hand before the act became effective and for which they were not required to demand any particular evidence of ownership. All vehicles sold by dealers after July 1, 1951, will be deemed to have been acquired by them after December 15, 1950, and this provision will no longer be operative.

If the vehicle was previously registered in another's name in Louisiana or any other title state and was acquired from a Louisiana dealer who came into possession of it after December

7. For the purposes of the act a new vehicle is one not previously licensed or titled in any state.

8. See note 2, *supra*.

9. La. R.S. (Supp. 1950) 32:702, defined dealer as "any person engaged in the business of buying, selling or exchanging motor vehicles which are subject to license."

15, 1950, a notarized bill of sale, an invoice from the dealer, a duly assigned and reassigned Certificate of Title and Registration Certificate assigned to the dealer by the person in whose name the certificate was issued, must be furnished.

A notarized bill of sale transferring ownership of the vehicle to the dealer, a registration certificate duly assigned to the dealer by the person in whose name the certificate was issued, a notarized dealer's bill of sale and a dealer's invoice must be attached to the application for title on vehicles previously registered in another's name in a non-title state and acquired by the dealer since December 15, 1950.

For vehicles purchased at a judicial sale, a judicial bill of sale¹⁰ issued by the selling authority must be submitted with the application for title.

Since lending institutions are not dealers within the meaning of the act,¹¹ it is necessary that they obtain title in their own names for repossessed vehicles. If they are unable to furnish an endorsed Certificate of Title and Registration Certificate, they must attach a certificate of repossession¹² to their application for title.

In recognition of the delay and difficulty incurred in the original issuance of titles for all the vehicles in the state, the act provides that, until January 1, 1952, in all cases where an endorsed Louisiana Certificate of Title and Registration Certificate are required, the applicant may submit a duly assigned copy of the original application (owner's Registration Certificate) together with a notarized bill of sale covering the current transaction.

It is provided that

"after December 15, 1950, the sole and exclusive method of executing and recording chattel mortgages which are subject to this chapter shall be through compliance with both the provisions of this chapter and Title 9, Section 5351 through 5365 of the Louisiana Revised Statutes of 1950, provided, however, that the effective date as against third persons, and the priority, of such chattel mortgages shall be as provided in this chapter rather than as provided in Title 9, Section

10. Department of Revenue, Motor Vehicle Division, Form Veh. 23.

11. La. R.S. (Supp. 1950) 32:702.

12. Department of Revenue, Motor Vehicle Division, Form Veh. 22.

5351 through 5365 of the Louisiana Revised Statutes of 1950."¹³

It would appear that compliance with both the Certificate of Title Act and the chattel mortgage provisions of Title 9 is required, but the statement of a companion act¹⁴ that the Title Act shall provide the exclusive method of executing and recording chattel mortgages on vehicles subject to its provisions and that such recording shall not be governed by Revised Statutes Sections 5351-5365 of Title 9 raises the question of whether recordation under the chattel mortgage provisions is necessary. There is no apparent reason for the continued recordation under these sections of the Revised Statutes; in view of the contradictory language of the two acts and of the fact that the Certificate of Title Act itself does not expressly state the effect of a failure to do so, it is possible that it will be held that such a recordation is not necessary. Nothing in the provisions of the act is to affect the validity of chattel mortgages executed prior to December 15, 1950, or the method of enforcing them.

A distinction is drawn between an ordinary chattel mortgage executed by the user¹⁵ of the vehicle and mortgages given by an automobile dealer on his stock to secure so-called floor plan loans. The former is made effective against third persons "from the date of notation of same by the Commissioner on the face of the Certificate of Title for such vehicle and the same shall be superior in rank to any privilege or preference arising subsequently thereto."¹⁶ The mortgage is noted on the face of the title by cancelling the old title, if one has been issued, and making a new title from a photostatic copy of the application for notation of the mortgage. Since all of this work is being done by a single state office, there will necessarily be a period of time between receipt of the mortgage by the commissioner and the production of a new title reflecting the mortgage. If the terms of the act are literally interpreted the new title would have to be issued before the mortgage could be said to have been noted on the title. Under such an interpretation the mortgagee is left without any protection dur-

13. La. R.S. (Supp. 1950) 32:710.

14. La. R.S. (Supp. 1950) 9:5366.

15. La. R.S. (Supp. 1950) 32:702, defines user as "any person who acquires a vehicle for purposes other than resale and is required to register same under the provisions of the Louisiana Vehicle Registration License Tax Law."

16. As the wording in regard to rank and privilege of the mortgage is identical with the conventional chattel mortgage act, La. R.S. (Supp. 1950) 9:5354, it is expected that it will receive the same interpretation. See Daggett, *Louisiana Privileges and Chattel Mortgages* (1942) § 24.

ing the interval between the receipt of the application by the commissioner and the production of a new title.

Any attempt toward an interpretation to the effect that receipt by the commissioner is the equivalent of notation will have to overcome the fact that the act provides that floor-plan mortgages on vehicles for which no titles have been applied for, "shall be effective against third persons from the time they are filed with the Commissioner."¹⁷ The act having drawn a distinction between filing with the commissioner and notation by the commissioner, it is to be presumed that such distinction was intended and is to be given effect.

No specific provision is made for the effective date of floor-plan mortgages on vehicles for which titles have been issued or for which applications for title have been made. Since the distinction seems to have been drawn on the basis of whether a title has been issued on the vehicle, it seems that such a case would be governed by the provisions requiring notation on the face of the title.

All chattel mortgages subject to the act must state the exact sum and date of maturity of the secured debt and describe the vehicle to be mortgaged, setting forth, insofar as it may exist with respect to the particular vehicle, the make, the year, the model, the type of body, the motor number, and manufacturer's serial number.

Mortgages other than floor-plan mortgages will be recorded by the commissioner only upon the receipt of a request made upon official forms¹⁸ accompanied by a multiple original or certified copy of the chattel mortgage and the Certificate of Title on the mortgaged vehicle or, if a title has not been issued, the Registration Certificate. In no case will the mortgage be recorded unless the Certificate of Title or Registration Certificate is attached to the application. To do so would leave the mortgagor with a clear title and the ability to convey the vehicle free of mortgage to third persons.

Nothing in the act gives the mortgagee the right to hold the title to the vehicle. Since conditional sales contracts are not recognized in this state, the mortgagor remains the owner of the vehicle and has a right to its title. Upon notation of the mortgage, the title is returned to the mortgagor and a receipt of notation is sent to the mortgagee.

17. La. R.S. (Supp. 1950) 32:710(B).

18. Department of Revenue, Motor Vehicle Division, Form Veh. 3.

For administrative purposes, *floor-plan mortgages* have been divided into three types—Type A, involving vehicles for which titles have been issued and are being surrendered; Type B, involving vehicles for which no titles have been issued; Type C, involving vehicles for which titles have been issued but for which titles are not being surrendered.¹⁹

Floor-plan mortgages of Types B and C will be filed in the register of floor-plan mortgages in the office of the commissioner upon receipt of an original or duplicate original of the chattel mortgage together with an authorized letter of transmittal in the appropriate form designated by the commissioner for that type of floor-plan mortgage. In addition, the titles to the mortgaged vehicles must be attached for Type C.

The official form for requesting cancellation of mortgages is the same as that used in applying for recordation of mortgages.²⁰ Since the new title is to be made from a photostatic copy of the request, the mortgage to be cancelled should not be shown on the form. A letter of transmittal in a form approved by the commissioner is the proper request for cancellation of floor-plan mortgages.

Mortgages will be cancelled only upon the submission of a request in the appropriate official form, together with a Certificate of Title and one of the following: the cancelled mortgage note clearly marked "paid," a certificate from a Parish Recorder of Mortgages to the effect that he is in possession of the paid note, an authentic act paraphed with the note stating that the described vehicle is released from the mortgage, or a sworn statement from an authorized representative of a bonded lending institution stating that the described vehicle has been released from the mortgage and that evidence of one of the other three types will be delivered to the commissioner within ninety days from the date thereof or within such extension of time as may be allowed.

The last type of evidence is designed primarily to enable mortgagees who have rediscounted the notes to cancel the mortgages immediately upon payment by the mortgagor by binding themselves to submit the cancelled note at a later date. Lending

19. This constitutes the sole exception to the rule that the mortgagee is not entitled to hold the title to the mortgaged vehicle. The official form letter for requesting notation of this type of mortgage contains the stipulation that "We are in possession of the aforesaid title and bind ourselves not to release it until the mortgage is paid. It is agreed that this stipulation shall run in favor of the Vehicle Commissioner and anyone else who is injured by our failure to do so."

20. Department of Revenue, Motor Vehicle Division, Form Veh. 3.

institutions desiring to avail themselves of this method of cancellation may do so by posting a bond with the Commissioner of Vehicles in such amount as he may determine.²¹

The act will cause a certain amount of personal inconvenience, and cases of hardship are bound to arise. The greater part of this inconvenience or hardship is attributable to the prior laxity in the regulation of vehicle ownership and the tremendous difficulties encountered in the institution of a successful administration of a regulation of so many facets and such far-reaching consequences. Every vehicle owner in the state has an interest in the success of the act for it is only through such measures that he can be reasonably secure in the sale, purchase, or mortgaging of his automobile which has come to play such a prominent role in his way of life.

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21. This bond must run in favor of the commissioner and any person who may sustain a loss by virtue of the cancellation of the mortgage when the obligation secured thereby has not in fact been satisfied and must bind the party securing the release to deliver to the commissioner the required proof of cancellation within ninety days from the date of cancellation or within such extensions of time as the commissioner may grant, not to exceed sixty days in the aggregate. It may be the bond of any licensed surety company qualified to do business in Louisiana. Any lending institution having a net worth of not less than four times the amount of the required bond and unencumbered assets located in Louisiana of not less than twice the amount of the bond may submit a surety bond of a third person whose net worth and unencumbered assets located in Louisiana are not less than twice the amount of the required bond. The commissioner has the exclusive power of determining the acceptability of the personal surety offered and may in his discretion increase the minimum requirements.