

LETTER OPINION
2000-L-149

September 1, 2000

Mr. R. Scott Stewart
Cavalier County State's Attorney
PO Box 151
Langdon, ND 58249-0151

Dear Mr. Stewart:

Thank you for your letter concerning whether N.D.C.C. § 47-19-03.1 applies to a deed or contract for deed in which there is an exception described by metes and bounds to the tract being conveyed. You cite as an example, the transfer of the Northwest quarter of section 30 of a certain township and range, less a five acre tract described by metes and bounds to which the grantor does not have title. You advise that it has been argued that since the grantor does not have title to the property being excepted, the metes and bounds description does not "affect" the title to or possession of real property. See N.D.C.C. §§ 11-18-05, 11-18-09, 11-18-11, 47-19-01, 47-19-03.1 (relating to recording of instruments affecting the title to real estate by a register of deeds).

N.D.C.C. § 47-19-03.1 states as follows:

The register of deeds may not record a deed or contract for deed containing a metes and bounds legal description which affects the title to or possession of real property that otherwise may be recorded under this chapter unless the name and address of the individual who drafted the legal description contained in the deed or contract for deed appears on the instrument in a legible manner. A deed or contract for deed complies with this section if it contains a statement substantially in the following form: "The legal description was prepared by _____ (name) _____ (address) or obtained from a previously recorded instrument." This section does not apply to any instrument executed before January 1, 2000, or any instrument executed or acknowledged outside the state. The validity and effect of the record of any instrument in a register of deeds office may not be lessened or impaired by

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the fact the instrument does not contain the statement
required by this section.

The argument that N.D.C.C. § 47-19-03.1 does not apply to a deed or contract for deed because a tract not owned by the grantor that is described by metes and bounds and excepted from the description of the overall grant does not affect the title to real estate is not persuasive.

The North Dakota Supreme Court held in Northwestern Imp. Co. v. Norris, 74 N.W.2d 497, 499, 508, (N.D. 1955) that an exception affects the title to real estate. The fact in the example that the grantor does not own and thus retain the excepted tract does not change this. An exception is something deducted from the thing granted, limiting what would otherwise pass by the general description of the grant. Christman v. Emineth, 212 N.W.2d 543, 552 (N.D. 1973). Accord Pederson v. Fed. Land Bank of St. Paul, 72 N.W.2d 227, 233 (N.D. 1955). The exception in the example defines the legal description of the real estate conveyed, thus, it affects the title to real estate. Northwestern Imp. Co. at 499, 508.

There is no qualification in N.D.C.C. § 47-19-03.1 concerning exceptions from the legal description of the real estate conveyed. "Where the language of a statute is plain and unambiguous . . . 'the statute must be given effect according to its plain and obvious meaning, and cannot be extended beyond it.'" Rausch v. Nelson, 134 N.W.2d 519, 525 (N.D. 1965) (citing City of Dickinson v. Thress, 290 N.W. 653, 657 (N.D. 1940)). In my opinion, a deed or contract for deed containing an exception from the description of the real estate conveyed of real estate not owned by the grantor described by metes and bounds is subject to N.D.C.C. § 47-19-03.1.

Sincerely,

Heidi Heitkamp
Attorney General

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