

**LETTER OPINION**  
**98-L-186**

October 16, 1998

Ms. Merle A. Torkelson  
McLean County State's Attorney  
PO Box 1108  
Washburn, ND 58577

Dear Ms. Torkelson:

Thank you for your letter requesting my opinion on the meaning of the phrase "[t]he register of deeds shall add immediately after the record of such instrument" in N.D.C.C. § 11-18-11. In its entirety, N.D.C.C. § 11-18-11 provides as follows:

When an instrument affecting the title to or creating a lien upon real estate within the county is numbered and entered in the reception book and indexed, it shall be recorded or filed as provided by law. The register of deeds shall write or stamp, or cause to be written or stamped, at the beginning of a recorded instrument the words "document number" and shall add thereto the number stamped or written on the document. The register of deeds shall add, immediately after the record of such instrument, a certificate reciting that the instrument was filed in the register of deeds' office and giving the date and hour of filing. The register of deeds shall authenticate the certificate with an official signature, but need not affix the official seal thereto.

When used as a verb, the term "'record' as used in our recording statutes means to transcribe or copy the instrument deposited with the register of deeds so that a copy of the instrument is made a part of the permanent records of the office." Northwestern Imp. Co. v. Norris, 74 N.W.2d 497, 506 (N.D. 1955). However, as used in the phrase in question, the term "record" appears to be used as a noun, rather than a verb. As a noun, the term "record" would therefore refer to the actual transcription or copy of the original deposited instrument, rather than the act of transcribing or copying.

This conclusion is supported by similar language in N.D.C.C. § 11-18-01(1), which requires the register of deeds to

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[k]eep a full and true record, in proper books provided for that purpose, of each patent, deed, mortgage, bill of sale, security agreement, judgment, decree, lien, certificate of sale, and other instrument required to be filed or admitted to record . . . .

Chapter 11-18 contains several other references to the term "record" in the context of the actual transcription or copy of the recorded instrument in the book of records. See N.D.C.C. §§ 11-18-01(3) ("the number or letter designating the book of records in which the record of the instrument is made"); 11-18-01(4) ("the book of records in which the record thereof is made"); 11-18-14 ("on the margin of the index opposite the record of each instrument").

The phrase "the record of such instrument" in N.D.C.C. § 11-18-11 thus appears to mean the transcription or copy of the recorded instrument in the book of records, rather than the act of transcribing or copying that instrument. Therefore, it is my opinion that N.D.C.C. § 11-18-11 requires the register of deeds to place an appropriate certificate immediately after the transcription or copy of the recorded instrument in the book of records. If, pursuant to N.D.C.C. § 11-10-19, the register of deeds uses microfilm to make a copy of the recorded instrument, it is my opinion that placing the appropriate certificate at the end of the instrument to be recorded, prior to its being microfilmed, meets the requirement of N.D.C.C. § 11-18-11.

Read in this manner, N.D.C.C. § 11-18-11 does not conflict with N.D.C.C. § 11-18-05(1)(a)(4), which requires that a space be provided on the front side of each instrument for the register of deeds' recording information. N.D.C.C. § 11-18-01(2) requires the register of deeds to "[e]ndorse upon each instrument filed with the register of deeds for record . . . the date and the hour and minute of the day of such filing." N.D.C.C. § 11-18-01(3) requires the register of deeds to also endorse upon each instrument when it is recorded "the number or letter designating the book of records in which the record of the instrument is made and the page upon which it is recorded." It is my opinion that the information required by N.D.C.C. § 11-18-01 subsections 2 and 3 is the information required to be placed in the space required to be reserved for that information by N.D.C.C. § 11-18-05(1)(a)(4).

Sincerely,

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