

N.D.A.G. Letter to Nelson (Jan. 6, 1987)

January 6, 1987

Ms. Carol S. Nelson
Barnes County State's Attorney
P.O. Box 209
Valley City, ND 58072

Dear Ms. Nelson:

Thank you for your letter of November 25, 1986, concerning the release of a financing statement filed with the register of deeds. I apologize for the delay in responding to you.

The question in your letter concerns a financing statement which has been filed as well as recorded as a mortgage lien against real property. You indicate that when a release is received by the register of deeds he files it but does not record it against the mortgage. This is done, I assume, pursuant to N.D.C.C. § 41-09-45 which provides for noting the release in the margin of the index of the filing of the financing statement.

In your letter you specifically ask whether a release filed with the register of deeds is sufficient to discharge the lien against the real estate. Whether or not the release is sufficient to discharge the lien is a question of fact to be determined from an examination of the release, the financing statement recorded as a lien and the security interest itself. However, the filing of the release indexed against the filing of the financing statement would not be sufficient notice of the release of the mortgage lien recorded in the mortgage book. If the release is only noted against the filing, third parties checking mortgage liens against a particular tract of land would not know that the lien had been released. For this reason, in order to provide notice to third parties that the lien is released, a recordable document should be recorded in the mortgage book against the tract in question.

N.D.C.C. § 41-09-45 states that the fee for filing and noting the release is the same as provided by N.D.C.C. § 41-09-42. N.D.C.C. § 41-09-42 provides one fee for filing a financing statement and a separate fee for the recording of a financing statement as a lien against real property. (In this regard, I have enclosed a copy of my letter to Michael S. McIntee, McHenry County State's Attorney, dated September 26, 1986.) Since an additional recording fee is charged when a financing statement is recorded as a mortgage lien, it is my opinion that an additional fee should be charged when a release of financing statement is recorded as a satisfaction of a mortgage lien.

I have enclosed a copy of Opinion No. 86-29 as you requested.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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Enclosure