

N.D.A.G. Letter to Furuseth (June 14, 1988)

June 14, 1988

Mr. Peter Furuseth
Williams County State's Attorney
P.O. Box 1246
Williston. ND 58802-1246

Dear Mr. Furuseth:

Thank you for your letter of March 2, 1988, wherein you inquire as to whom should receive notice of the expiration of the period of redemption for real estate sold to the county for taxes. N.D.C.C. § 57-28-04. In addition, you wish to know whether a severed mineral interest owned by the surface owner would also pass to the county if the land is sold to the county for taxes.

In response to your first question, N.D.C.C. § 57-28-04 provides, in part, that "[t]he county auditor shall serve the notice of the expiration of the period of redemption upon the owner of the record title of the real estate sold to the county for taxes, and upon each mortgagee, lienholder, and other person interested therein as may appear from the records of the register of deeds and the clerk of the district court of said county."

The reference to "other person interested" goes beyond a person with a possessory interest and would include a leaseholder and a royalty interest owner. Payne v. A. M. Fruh Company, 98 N.W.2d 27 (N.D. 1959). An easement holder and any entity having a security interest in planted crops would also be interested persons under N.D.C.C. § 57-28-04.

Because, under the North Dakota Supreme Court's decision in Bilby v. Wire, 77 N.W.2d 882 (N.D. 1958), only the surface rights are passed in a tax sale and not the severed mineral interest, it is not clear whether the severed mineral interest owner should receive notice of the expiration of the period of redemption. The only possible interest of the severed mineral interest owner which is at risk is the right of entry upon the surface. Nevertheless, because of the expansive view of the term "other person interested" taken by the North Dakota Supreme Court in Payne, it is my opinion that the advisable practice would be to give notice of the expiration of the period of redemption to the owner of a severed mineral interest.

In response to your second question, once one entity has obtained all of the collective ownership interests in a particular tract, the interests are unified and the entire combined estate would pass to the county if the land is sold to the county for taxes.

Sincerely,

Nicholas J. Spaeth

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