

N.D.A.G. Letter to McLean (Aug. 21, 1989) (1)

August 21, 1989

Ms. Jeanne L. McLean
Bottineau County State's Attorney
P.O. Box 26
Bottineau, ND 58318

Dear Ms. McLean:

Thank you for your April 24, 1989, letter inquiring whether an assignment of a contract for deed to a financial institution to secure a loan may be recorded by a register of deeds if there are delinquent taxes against the real property described in the contract for deed. I apologize for the delay in answering your question.

For the following reason, it is my opinion that an assignment of a contract for deed to a financial institution to secure a loan may not be recorded by a register of deeds if there are delinquent taxes against the real property described in the contract for deed.

N.D.C.C. § 11-18-02 provides, in pertinent part, that "[e]xcept as provided in section 11-18-03, the register of deeds shall refuse to receive or record any . . . contract for deed . . . unless there is entered thereon a certificate of the county auditor showing that a transfer of the lands described therein has been entered and that the delinquent taxes . . . against the land described in such instrument have been paid."

N.D.C.C. § 11-13-12 provides, in pertinent part, that "[w]henver a . . . contract for deed . . . is presented to the county auditor for transfer, he shall ascertain from the books and records in his office and in the office of the county treasurer if there are delinquent taxes . . . against the land described in the instrument. . . . If there are delinquent taxes . . . against lands described in the instrument, he shall certify the same."

A register of deeds is a ministerial officer. Rising v. Dickinson, 121 N.W. 616 (N.D. 1909). The authority of ministerial officers is to be strictly construed. Youngblood v. United States, 141 F.2d 912 (6th Cir. 1944)

76 C.J.S. Register of Deeds § 10, at 514 (1952), states as follows:

Generally, the duty of the register is to receive and file, or receive and record, as the case may be, such instruments, and only such instruments, as by law are entitled to be filed or recorded, and to file or record them in such manner as to serve all the purposes of the law.

Further, the provisions of N.D.C.C. §§ 11-18-02 and 11-13-12 is clear and unambiguous. "When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be

disregarded under the pretext of pursuing its spirit." N.D.C.C. § 1-02-05. Haider v. Montgomery, 423 N.W.2d 494 (N.D. 1988). See also N.D.C.C. §§ 1-02-02, 1-02-03.

Therefore, before a register of deeds can record an assignment of a contract for deed, compliance with the provisions of N.D.C.C. §§ 11-18-02 and 11-13-12 must be met.

In a related manner, you have also inquired when a county treasurer should send the annual tax statement when an assignment for contract for deed is recorded. N.D.C.C. § 57-20-07.1 provides as follows:

57-20-07.1. County treasurer to mail real estate tax statement. On or before December twenty-sixth of each year, the county treasurer shall mail a real estate tax statement to the owner of each parcel of real property at his last known address. If a parcel of real property is owned by more than one individual, the county treasurer shall send only one statement to one of the owners of that property. Additional copies of the tax statement will be sent to the other owners upon their request, and the furnishing of their names and addresses to the county treasurer. Such tax statements shall include a dollar valuation of the true and full value as defined by law of the property and the total mill levy applicable. Failure of an owner to receive a statement will not relieve that owner of liability, nor extend the discount privilege past the February fifteenth deadline.

(Emphasis supplied.)

When real property is sold under a contract for deed, the vendor remains the legal owner until the terms of the contract are completed. Therefore, if only one real estate statement is sent by the county treasurer, it should be sent to the vendor of the contract for deed.

I hope this discussion is helpful to you.

Sincerely,

Nicholas J. Spaeth

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