

**N.D.A.G. Letter to McIntee (Sep. 26, 1986)**

September 26, 1986

Mr. Michael S. McIntee  
McHenry County State's Attorney  
McHenry County Courthouse  
P.O. Box 246  
Towner, ND 58788

Dear Mr. McIntee:

Thank you for your letter of September 3, 1986, concerning the recording of a UCC Financing Statement by a local power company in your county. Your question is whether N.D.C.C. §41-09-42(7) allows a register of deeds to both file and record a financing statement for one fee.

In my opinion, N.D.C.C. §41-09-42(7) does not allow a register of deeds to both file and record a financing statement for one fee.

N.D.C.C. §41-09-42(7) states:

When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection 5 of section 41-09-03, or if filed as a fixture filing, it shall be filed for record. Upon payment of the fee required for recording the same, the filing officer shall also record the financing statement and index it in the same fashion as if the financing statement were a mortgage of the real estate described. (Emphasis supplied.)

In my opinion, filing for record to which N.D.C.C. §41-09-42(7) refers is the filing as described in N.D.C.C. §41-09-42(1). A UCC Financing Statement is filed by noting its existence alphabetically by the name of the debtor and filing two copies in a file under the name of the debtor. A fixture filing may also be a lien on real property and so the creditor might desire that evidence of the lien (the financing statement) be recorded against the real estate as a mortgage. Recording a financing statement as a mortgage against the real property concerned involves photocopying or microfilming the financing statement copy for preservation in the mortgage books or microfilm files of the register of deeds, together with indexing by land description in the mortgage index.

The distinction between filing and recording is apparent in N.D.C.C. §11-18-01 concerning the duties of a register of deeds, in which subparagraph 1 provides:

11-18-01. REGISTER OF DEEDS' DUTIES --RECORDING INSTRUMENTS -- ABSTRACTS -- RECORDING BRANDS. The register of deeds shall:

1. Keep 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, if the person offering such instrument for filing or recording shall first pay to him the fees provided by law for such filing or recording. (Emphasis supplied.)

\* \* \*

Filing a financing statement and recording a financing statement are separate and distinct duties of the register of deeds and involve different tasks. The fees for each are separate. N.D.C.C. §41-09-42(5) provides the fee required for filing a financing statement and N.D.C.C. §41-09-42(7), as you indicate, provides that the financing statement may also be recorded as a mortgage against real property if the appropriate recording fee is paid.

Sincerely,

Nicholas J. Spaeth

cv