

Date Issued: February 13, 1984 (AGO 84-13)

Requested by: Ronald W. McBeth
Richland County Assistant State's Attorney

- QUESTION PRESENTED -

Whether a lis pendens can be recorded without first being acknowledged.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a lis pendens cannot be recorded without first being acknowledged.

- ANALYSIS -

Section 28-05-07 of the North Dakota Century Code provides for the filing of a lis pendens in an action relating to real property. Although the lis pendens statute speaks of filing of a lis pendens with the register of deeds office, the statute does not provide guidance on the technical requirements of recording. It is my opinion, therefore, that the recording provisions of chapter 47-19, N.D.C.C., are applicable.

Section 47-19-02, N.D.C.C., lists those instruments that may be recorded without acknowledgment. Section 47-19-03, N.D.C.C., establishes prerequisites to recording instruments and states as follows:

47-19-03. PREREQUISITES TO RECORDING INSTRUMENTS. Before an instrument can be recorded, unless it belongs to a class provided for in section 47-19-02 or 47-19-40, its execution must be established:

1. If executed by an individual, by acknowledgment by the person executing the same;
2. If executed by a corporation, by execution and acknowledgment by the person or persons authorized to execute instruments under section 47-10-05.1;
3. By proof by a subscribing witness as is provided by section 47-19-22;
4. By proof of the handwriting of the person executing an instrument and of a subscribing witness thereto as is prescribed by sections 47-19-23 and 47-19-24 and filing of the original instrument in the proper office there to remain for public inspection.

Section 47-19-40, N.D.C.C., applies to actions to correct or prove certificates of acknowledgment and is inapplicable to this question.

The language of section 47-19-03, N.D.C.C., is clear and unambiguous. Since a lis pendens is not listed as an instrument that may be recorded without acknowledgment or further proof under either

sections 47-19-02 or 47-19-40, N.D.C.C., it is my opinion that the acknowledgment of its execution is a prerequisite to the recording of a lis pendens.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question is decided by the courts.

Robert O. Wefald
Attorney General

Prepared by: Lawrence Bender
Assistant Attorney General