

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 88-18

Date issued: July 6, 1988

Requested by: Jeanne McLean, Bottineau County State's
Attorney

- QUESTIONS PRESENTED -

I.

Whether every document affecting title to real property filed with a register of deeds must contain, for purposes of indexing, a property description.

II.

Whether documents in the grantor and grantee indexes must also appear in the tract index.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that every document affecting title to real property filed with a register of deeds must contain, for purposes of indexing, a property description.

II.

It is my further opinion that documents in the grantor and grantee indexes must also appear in the tract index.

- ANALYSIS -

I.

Two statutes in the North Dakota Century Code concern indexes to be kept by a register of deeds. The first statute, N. D. C. C. ' 11-18-07, requires a tract index. This statute states:

The register of deeds shall keep a separate tract index of the deeds, contracts, and other instruments which are not merely liens and a separate tract index of the mortgages and other liens affecting or relating to the title to real property.

It is, of course, impossible to note in the tract index a document lacking a property description. The raison d'etre of the tract index is to allow

discovery of instruments relating to a particular tract. Only if an instrument contains a property description can it be noted in the tract index.

The second statute requiring an index is N. D. C. C. ' 11-18-08. This statute states:

The register of deeds shall keep separate grantor and grantee indexes of the deeds, contracts, and other instruments not merely liens, and separate grantor and grantee indexes of the mortgages and other instruments which are liens affecting or relating to the title to real property.

The statute then sets forth what "shall" be included in these indexes. One requirement is "[a]n abbreviated description of the real property affected by such instruments." N. D. C. C. ' 11-18-08(4). If a register of deeds is to carry out this duty faithfully, he or she may only note those instruments that contain a property description in the grantor and grantee indexes.

In summary, because the tract index -- by necessity -- and because the grantor and grantee indexes -- by statute -- require a legal description, every document affecting title to real property filed with a register of deeds must contain, for it to be placed in either index, a legal description of the subject property. See also 1974 N. D. Op. Att'y Gen. 323, 326. ("We would conclude that a deed purporting to convey real property must contain a description of the real property to be conveyed in order to be entitled to record.") This view is supported by N. D. C. C. ' 11-18-05(1)(a)(3) that says all documents "affecting title" to real estate "must have a legal description considered to be adequate by the register of deeds before such instrument will be accepted for recording."

II.

Each entry in the grantor and grantee indexes must also appear in the tract index. A document must have a legal description to be noted in the grantor and grantee indexes. See N. D. C. C. ' 11-18-08(4). Therefore, because all instruments in such indexes contain a property description, they must also be noted in the tract index.

This conclusion is established not only by statutory interpretation, but also by case law.

In Rising v. Dickinson, 121 N. W. 616 (N. D. 1909), the court held that a register of deeds has a duty to use the tract index as well as the grantor and grantee indexes. In this case, the register of deeds recorded a mortgage in the reception book, the grantor and grantee indexes, and the mortgage book. Rising bought the subject land after reviewing the tract index, which did not mention the mortgage. After Rising's purchase of the land, the mortgagee foreclosed. Rising sued and sought recovery for his loss from the register of deeds. The court said the register of deeds was negligent because the

register of deeds has a duty to note a mortgage on all indexes established by statute and may not choose in which index to note the mortgage. Id. at 617. Therefore, a register of deeds should record in the tract index all documents recorded in the grantor and grantee indexes.

- EFFECT -

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

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