

LETTER OPINION
95-L-289

December 11, 1995

Phyllis A. Ratcliffe
Griggs County State's Attorney
PO Box 541
Cooperstown, ND 58425

Dear Ms. Ratcliffe:

Thank you for your letter concerning N.D.C.C. § 35-03-04 which provides that no mortgage of real property may be recorded unless it contains "an adequate statement as to the amount of indebtedness and the terms of interest." Specifically, you ask whether a mortgage is entitled to be recorded when the repayment language in the mortgage states the terms of interest as "at such rates as may be provided for in the Indenture and Bonds, in accordance with the terms and conditions of the Bonds."

N.D.C.C. § 35-03-04 provides:

No mortgage of real property may be received for record by the register of deeds unless it contains the post-office address of the mortgagee and an adequate statement as to the amount of indebtedness and the terms of interest. No assignment of a mortgage on real property which does not contain the post-office address of the assignee may be received for record.

The meaning of a statute must be sought initially from the statutory language. County of Stutsman v. State Historical Soc., 371 N.W.2d 321, 325 (N.D. 1985). Words in a statute are to be given their plain, ordinary, and commonly understood meanings. Kim-Go v. J. P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990); N.D.C.C. §§ 1-02-02 and 1-02-03. Consideration should be given to the ordinary sense of these words, the context in which they are used, and the purpose which prompted their enactment. County of Stutsman, 371 N.W.2d at 327.

The plain language of N.D.C.C. § 35-03-04 requires as a prerequisite to recording a mortgage "an adequate statement as to the amount of indebtedness and the terms of interest." "Adequate" is defined, in part, as suitable or sufficient. The American Heritage Dictionary, 79 (2d coll. ed. 1991). A mortgage that only states the terms of interest as a rate that is provided for in a separate document which is not recorded, fails to suitably or sufficiently state the terms of interest. It is, therefore, my opinion that such a mortgage is not entitled to be recorded. In a similar issue, Attorney General Helgi

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Johanneson reached the same conclusion. See Letter from Attorney General Helgi Johanneson to Mr. Rodney S. Webb (March 1, 1972).

N.D.C.C. § 35-03-04 has been amended since this previous letter opinion was written. As amended, "a complete description of the . . . rate of interest" was no longer required. See 1985 N.D. Sess. Laws ch. 382. Instead, only "an adequate statement as to the . . . terms of interest" is required. Id. Under this amendment, a formula for computing interest can be used rather than a fixed amount. However, the mortgage described in your letter does not simply state the interest rate as a formula, but incorporates by reference a formula or amount of interest as stated in a separate document which is unrecorded. This "statement" is not "adequate" as required by N.D.C.C. § 35-03-04.

However, based on further information you supplied in your November 10, 1995, follow-up letter and information supplied by bond counsel, I believe an adequate statement regarding the terms of the interest could readily be made by stating some known discreet interest rate number (or numbers) or formula together with a reference to particular publicly issued bond documents which would more fully explain how the interest rate or series of rates would be derived and specifically where such documents would be publicly available. For example, in the particular bond-related mortgage loan about which you inquired, it is my understanding that the mortgage loan interest rates mirrored the bond interest rates set forth in the Trust Indenture which was publicly available in the Cooperstown city auditor's office.

One way of describing the mortgage loan interest rates within the mortgage which I believe would be adequate for purposes of N.D.C.C. § 35-03-04 would be to state as follows:

[A]t a series of interest rates ranging from 4.70% to a maximum of 7.50% as is more fully described in the Trust Indenture for the City of Cooperstown, North Dakota, Health Care Facilities Revenue Bonds (Griggs County Hospital and Nursing Home Project) Series 1995, available for public inspection at the office of the city auditor, Cooperstown, North Dakota.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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