

LETTER OPINION
96-L-214

November 13, 1996

Mr. Jerry Renner
Kidder County State's Attorney
PO Box 229
Steele, ND 58482-0229

Dear Mr. Renner:

Thank you for your letter asking whether a document must have an original signature to be recorded by the county register of deeds or whether a photocopy of a signed document is sufficient for recording. You also ask whether the acknowledgment needs to be an original with an imprinted seal or whether a photocopy of the notary's signature and seal are sufficient for recording.

The general rule is that the original instrument must be filed rather than a copy, unless the statute specifically provides for recording or filing a copy. 76 C.J.S. Records § 10 (1994), 66 Am. Jur. 2d, Records and Recording Laws, § 128 (1973). See generally Bates v. Bates, 24 So.2d 440 (Ala. 1946) (no legal authority to register a copy of a deed except for statute allowing copies certified by public officials); Northern Pacific Ry. Co. v. Advance Realty Co., 78 N.W.2d 705, 712 (N.D. 1956) ("It is not only the deposit of the original instrument but the correct record thereof that constitutes constructive notice."). Two chapters of the North Dakota Century Code specifically relate to the recording of documents in the office of the register of deeds. N.D.C.C. ch. 11-18 governs the register of deeds and specifies the duties of the register of deeds in recording documents. N.D.C.C. ch. 47-19 specifies the documents entitled to be recorded and specifies the requirements for recording documents in the register of deeds' office.

In a 1990 letter opinion, this office concluded that the register of deeds did not have authority to record a faxed power of attorney, citing N.D.C.C. §§ 11-18-05, 11-18-15, 47-19-03, and 47-19-29. The opinion stated: "No language in these statutes authorizes a register of deeds to record faxed or copied documents." Letter from Attorney General Nicholas J. Spaeth to James W. Wold (Sept. 27, 1990).

Copies of specific types of documents, however, are authorized by statute to be recorded by the county register of deeds. See, e.g., N.D.C.C. §§ 28-24-03 (a duplicate of the written notice of redemption shall be recorded in the office of the register of deeds); 28-25-13

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(a certified copy of the court order for the appointment of a receiver must be recorded in the office of the register of deeds); 30.1-10-01(2)(d) (a copy of a disclaimer of interest in real property may be recorded in the office of the register of deeds); 38-18.1-06 (a copy of the notice of lapse of mineral interest must be recorded in the office of the register of deeds); 40-51.2-07 (a copy of the resolution, certified by the executive officer of the municipality must be filed and recorded with the county register of deeds); 41-09-41(1) ("A carbon, photographic, or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state.") It is a principle of statutory construction that the mention of one thing implies the exclusion of another. Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993). The fact that the Legislature specified that a copy of a record could be filed in several specific instances implies that the original record must be filed in all other instances.

Based on the foregoing, it is my opinion that unless a statute specifically authorizes the filing or recording of a copy, the document to be filed must contain original signatures and, if required to be acknowledged, an original acknowledgment. See N.D.C.C. § 11-18-15 (notary seal or documents filed with register of deeds may be stamped or imprinted).

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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