

N.D.A.G. Letter to Selinger (May 20, 1991)

May 20, 1991

Mr. Bruce A. Selinger
Slope County State's Attorney
P.O. Box 1173
Dickinson, ND 58602

Dear Mr. Selinger:

Thank you for your April 26, 1991, letter concerning recording requirements with respect to a personal representative's deed of distribution. You specifically inquired whether N.D.C.C. § 11-18-03(3) applies to a personal representative's deed of distribution.

N.D.C.C. § 11-18-03 provides in part:

The following instruments may be recorded by the register of deeds without the auditor's certificate referred to in section 11-18-02:

.....

3. A final decree of distribution or any order terminating joint tenancy or any judgment or decree affecting title to real estate, which must be presented to the auditor's office prior to being placed of record in order to allow the auditor to make such changes in the tax rolls of his office as may be necessary.

N.D.C.C. § 11-18-02 prohibits the register of deeds from recording "any deed" and certain other specified instruments except as otherwise provided in N.D.C.C. § 11-18-03 unless the county auditor has certified that a transfer of the property described has been entered and that any delinquent taxes and special assessments have been paid or that the deed is entitled to recordation without regard to taxes. Only a mineral deed and a deed conveying a right of way to the state, a political subdivision or city may be recorded without the auditor's certificate. N.D.C.C. § 11-18-03(2),(4).

Real property in estates has been transferred for the most part by a personal representative's deed of distribution rather than a final decree of distribution since the Uniform Probate Code became effective July 1, 1975. N.D.C.C. §§ 30.1-20-07, 30.1-20-08. Although a personal representative's deed of distribution has been used to transfer real property in estates since that date, the Legislature has not amended N.D.C.C. § 11-18-03 to permit recording such deeds without the auditor's certificate.

If a statute is clear and unambiguous, "the letter of the statute cannot be disregarded." County of Stutsman v. State Historical Soc., 371 N.W.2d 321, 325 (N.D. 1985). In construing a statute, words must be given their plain, ordinary and commonly understood

meaning. Peterson v. Heitkamp, 442 N.W.2d 219, 221 (N.D. 1989). It is improper to construe the provisions of a statute to legislate that which the words of the statute do not themselves provide. Id. at 221.

N.D.C.C. §§ 11-18-03(3) and 11-18-02 are clear and unambiguous. In my opinion, N.D.C.C. § 11-18-03(3) does not apply to a personal representative's deed of distribution. This is consistent with a recent opinion that a personal representative's deed conveying property pursuant to a contract for deed may not be recorded without an auditor's certificate. Letter from Nicholas J. Spaeth to Robert E. Manly (December 6, 1989). This overrules an opinion dated June 5, 1979, to the contrary. Letter from Allen I. Olson to Randy A. Deede (June 5, 1979). Allowing a personal representative's deed of distribution to be recorded without the county auditor's certificate requires specific legislative action.

Sincerely,

Nicholas J. Spaeth

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