

N.D.A.G. Letter to Wold (Sep. 27, 1990)

September 27, 1990

Mr. James W. Wold
Griggs County State's Attorney
P.O. Box 541
Cooperstown, ND 58425-0541

Dear Mr. Wold:

Thank you for your April 20, 1990, letter requesting my opinion on whether a register of deeds may record a faxed power of attorney. I apologize for the delay.

For the following reasons, it is my opinion that a register of deeds may not record a faxed power of attorney.

A register of deeds is a ministerial officer. Rising v. Dickinson, 121 NW 616, 617 (ND 1909). The authority of ministerial officers is to be strictly construed. Youngblood v. U.S., 141 F.2d 912, 913 (6th Cir. 1944).

Generally, the duty of the register is to receive and file, or receive and record, as the case may be, such instruments, and only such instruments, as by law are entitled to be filed or recorded, and to file or record them in such manner as to serve all the purposes of the law.

76 C.J.S. Register of Deeds, 10 (1952).

N.D.C.C. ch. 11-18 outlines the powers and authority of a register of deeds when recording instruments. N.D.C.C. § 11-18-05 provides in relevant part:

Fees of register of deeds. The register of deeds shall charge and collect the following fees:

1. For recording an instrument affecting title to real estate:
 - a. Deeds, mortgages, and all other instruments not specifically provided for in this subsection, five dollars for the first page and two dollars for each additional page.
 - (1) "Page" means one side of a single legal size sheet of paper not exceeding eight and one-half inches [21.59 centimeters] in width fourteen inches [35.56 centimeters] in length.

- (2) The printed, written, or typed words must be considered legible by the register of deeds before the page will be accepted for recording.

(Emphasis supplied.) N.D.C.C. 11-18-05(1)(a)(1)

N.D.C.C. § 11-18-15 states that the notary seal on any document filed with the register of deeds may be in either a stamped or imprinted form. N.D.C.C. § 11-18-15. Therefore, the power of attorney must contain printed, written or typed words that are legible and it must also contain a notary seal. N.D.C.C. §§ 11-18-05(1)(a)(2) & 11-18-15.

N.D.C.C. 47-19-29 outlines the form for a certificate of acknowledgment by an attorney-in-fact when a document is delivered to a register of deeds for recording. N.D.C.C. 47-19-29.

No language in these statutes authorizes a register of deeds to record faxed or copied documents.

Furthermore before recording an instrument regarding real property the "execution must be established." N.D.C.C. 47-19-03. While this can be done in several ways, each requires an original signature.

A register of deeds is a ministerial officer which is unable to exercise discretion in determining what may be recorded. Therefore it is my opinion a register of deeds may not record a faxed instrument.

I trust this has satisfactorily addressed your inquiry.

Sincerely,

Nicholas J. Spaeth

ah