

**OPINION
73-336**

June 19, 1973 (OPINION)

Mr. Richard B. Thomas
State's Attorney
Ward County Courthouse
Minot, ND 58701

Dear Mr. Thomas:

This is in reply to your letter of 21 May 1973, questioning the fees to be charged by the Register of Deeds for:

1. The Recording of declaration of condominium;
2. Plant and survey copies;
3. Filing cards showing the description and location of underground facilities.

You indicate that in discussing this matter with your Register of Deeds it appears that the amount charged for filing those items in subparagraphs 1 and 2 vary throughout the state.

You mention that Chapter 47-04.1 of the North Dakota Century Code mentions nothing regarding fees to be charged for recording such declaration, and that section 47-04.1-03 thereof provides for the contents of the declaration. You mention that the declaration becomes extremely bulky, consisting primarily of plans showing the individual units. You state that in seeking to preserve the declaration of condominium as a public record, the Register of Deeds ordered folders at a cost of approximately \$60.00 to hold the documents. You indicate that the County Commissioners balked at the cost and indicated that this expense should be passed to the owner. You indicate that after examining section 11-18-05A, subparagraph 20, of the North Dakota Century Code, it appeared that no greater fee than indicated could be charged. The thought was then presented that the owner provide the declaration in suitable condition to be recorded, i.e., in plastic envelopes satisfactory to the Register of Deeds, necessary to preserve the documents.

You ask whether this would be a valid and enforceable requirement prior to recording. Also, you ask whether the fees as indicated would apply.

You next indicate that at the present time the Register of Deeds is charging \$2.00 for recording plats. You state that no authority exists for such charge. You note that section 40-50-07 of the North Dakota Century Code provides the Register of Deeds shall receive the rate of two cents for each lot contained in the townsite or addition. You state that it is the opinion of your office that only this fee may be charged.

You indicate that as to filing of cards showing the description and location of underground facilities, you have not received the 1973

Session Laws and would request guidance as to the fee charged for filing.

You state that any assistance we could provide would be appreciated since you believe most of the Register of Deeds in the state are confused as to the fees to be charged.

As to your first question, we do recognize the problem, though we would assume that subsection 10 of section 11-18-05A, being predicated on the words in the document, was designed to compensate the office for recording of bulky documents. We are enclosing herewith a photocopy of House Bill No. 1344, 1973 Session, effective July 1, 1973, as to the next increase in these fees. We would assume, however, that a further problem will arise with condominium recordings, i.e., transfers, conveyances, mortgages, etc., of the individual terms of condominium property on which basis, also, some form of folders might be appropriate.

We would agree with you that the owner must provide the declaration in suitable condition to be recorded. We would assume also that the Register of Deeds could recommend plastic envelopes, general form, size of paper, etc., of same. However, find no authority in the law for the Register of Deeds to promulgate valid and enforceable requirements as to plastic envelopes, general form, size of paper, etc.

As to the recording of plats, we also find no authority for the \$2.00 fee you mention. We would tentatively assume that where the plat is accompanied by printed or typed documents, such as dedications, conveyances, covenants, etc., the total recorded material might require a fee under another of the subsections of section 11-08-05, though the plat itself should be recorded for the fee specified in section 40-50-07 of the North Dakota Century Code.

As to the filing of cards showing description and location of underground facilities, we also have not received the 1973 Session Laws. However, we are enclosing herewith a photocopy of Senate Bill No. 2036, which we believe to be the matter to which you refer. As you will note, this bill does not specify any fee for such filing. The fees provided for in section 11-18-05 of the North Dakota Century Code are stated to be for "recording".

We note at 76 C.J.S. 108 the term "recording" is defined as:

"Recording. Copying an instrument into the public records in a book kept for that purpose by or under the superintendence of the officer appointed therefor; registering.

"It has been synonymous with "entering" see 30 C.J.S. p. 260, note 76, 'filing' see 36 C.J.S. p. 757 note 20.2, 'registering' and 'registration'.

"It has been distinguished from 'delivery' see 26 C.J.S. p. 697, note 59.3, and 'filing' see 36 C.J.S. p. 757 note 24."

We note quite a number of cases considered in 36A, Words and Phrases Permanent Edition, pages 74-75. While we note one case there

considered indicating that the terms "recording", "registration" and "filing" to be used interchangeably, most of the cases there considered tend towards the conclusion indicated for the California Court in *Beatty v. Hughes*, 143 p. 2d. 110, 111, 61 Cal. A. App. 2d. 489, and the Federal Court in "*The Washington, C.C.A., N.Y.*", 16 F. 2d. 206, 208."

The *Beatty* case is stated as holding that term is defined as copying an instrument into the public records in a book kept for that purpose by or under the superintendence of the officer appointed therefor. The Washington decision is stated as indicating that "entry" or "entering" is ordinarily synonymous with "recording" and connotes a greater duty than, or additional to, that preservation which is the essence of filing.

We note the verb "record" defined in Black's Law Dictionary, Revised Fourth Edition, page 1437, as:

"To commit to writing, to printing, to inscription, or the like, to make an official note or, to write, transcribe or enter in a book or on parchment for the purpose of preserving authentic evidence of, or on a wax cylinder, rubber disk, etc., for reproduction, as by a phonograph, or to register or enroll. To transcribe a document, or enter the history of an act or series of acts, in an official volume for the purpose of giving notice of the same, of furnishing authentic evidence, and for preservation. (citing cases)"

Look also to the process described in chapter 47-19 of the North Dakota Century Code, we think it obvious that the term "recording" as used in section 11-18-05 of the North Dakota Century Code means something other than "filing". While it is entirely possible that in the process of "recording" oil and gas leases, with long lists of grantees, subdivisions of interests, etc., in some of the early railroad deeds, court decrees, etc., and perhaps in the case of condominium declarations, involving a great deal of verbiage, rather than the Register of Deeds copying the instrument into the book, the parties involved in the transaction will furnish the copy and that eventually becomes a part of the record. Nevertheless, under our statutes we conclude that "recording" means something more than "filing" and something more than the process described in Senate Bill No. 2036, 1973 Session.

On such basis, nothing that said Senate Bill No. 2036 prescribes no fee, and as we find no fee prescribed elsewhere in the Code for the process of "filing" as therein described, we must conclude that there is no fee that the Register of Deeds may properly charge for the duties prescribed by said Senate Bill No. 2036.

We hope the within and foregoing will be sufficient for your purposes.

Sincerely yours,

Allen I. Olson

Attorney General