

**OPINION
75-142**

September 8, 1975 (OPINION)

Mr. Marshall T. Bergerud

Attorney at Law

Dunn County State's Attorney

Killdeer, ND 58640

Dear Mr. Bergerud:

This is in response to your letter of August 25, 1975, wherein you request an opinion of this office relative to the procedures under the provisions of Chapter 38-08.1 of the North Dakota Century Code, as amended by Chapter 315 of the 1975 Session Laws. You submit the following in your letter:

On behalf of the Dunn County Register of Deeds, I hereby request the opinion of your office on the two following questions:

1. Procedure under Chapter 315 of the 1975 Session Laws: Subsections 4 and 5 of Chapter 315 of the 1975 North Dakota Session Laws require the following of the following documents in the Register of Deeds Office, to wit:
 - a. Notice of Intention to Engage in Drilling; and
 - b. Record of Drilling.

The question is, what should the specific procedure followed by the Register of Deeds be as to the handling of such documents; i.e., should there be a reception record, some form of index, etc., of these notices? Further, what fees, if any, should be charged by this official for such filing?

2. Acknowledgements Required for Recordings:

This question arises under Subsection 1 of Section 47-19-03 and involves multiparty real property agreements and contracts which are signed by two or more parties. Specifically, can a lease or other contract be recorded where the execution of one of the parties to the agreement has been acknowledged before a proper official, but where the other party(ies) executing the agreement has failed to have their acknowledgement completed?

With regard to your first question concerning the procedures to be followed by the Register of Deeds as to the handling of such documents, we would note the provisions of Section 38-08.1-04 of the North Dakota Century Code, as amended, which provides as follows:

38-08.1-04. FILING OF NOTICE OF INTENTION TO ENGAGE IN

DRILLING. Any person desiring to engage in drilling within this state must, prior to actually engaging in such drilling, file a notice of intention to engage in drilling with the county register of deeds in each county in which drilling is to be carried on. The notice of intention shall include the name of the person who intends to drill; his address or principal place of business; the name and address of the resident agent for the service of process on said person; the date upon which drilling will commence; the township, range, section, and quarter-section in which drilling is to be carried on; and the estimated depth of the drill hole. Notices filed with the county register of deeds under this section shall be maintained in a manner separate and apart from any other records or indices concerning the land described in the notice. (Emphasis supplied)

Noting that the statute provides specifically that notices filed with the Register of Deeds under this section shall be maintained in a manner separate and apart from any other records or indices concerning the land described in the notice, we can only assume that such filings be maintained separately for the same and that indices also be maintained separately for the singular purpose of indexing the notices filed under said Chapter 38-08.1. It would appear that a reception record should be maintained just as would be true of other documents received for recording with the Register of Deeds, and it would appear that proper index would be necessary to avoid confusion and permit orderly search of the record as pertaining to such notices. Accordingly, we are of the opinion that only the specific mandate of the statute would alter the usual and common practice and procedure of the Register of Deeds in filing and indexing such notices as are provided for under Sections 38-08.1-04 and 38-08.1-05 of the North Dakota Century Code, as amended by Chapter 315 of the 1975 Session Laws, and that such notices and indices must be kept apart and separate from other filings related to the lands involved in the notices filed thereunder.

With regard to the fees which should be charged by the Register of Deeds for such filing, we note the provisions of Section 11-18-05 of the North Dakota Century Code which provides as follows, in part, and as applicable to the subject of your inquiry:

11-18-05. FEES OF REGISTER OF DEEDS. The register of deeds shall charge and collect the following fees:

* * *a. through j.* * *

k. For filing and indexing any instrument not specified in this section, the filing of which is authorized by law, one dollar. (Emphasis supplied)

There being no specific fees set forth under the provisions requiring the filing of such notices, it would appear that said Section 11-18-05(k) as set forth above would govern since the instrument in question is authorized and required by law to be filed.

With regard to your question concerning the requirement of acknowledgments for filing as set forth under Subsection 1 of Section

47-19-03 of the North Dakota Century Code, particularly in those instances where multiparty real property agreements and contracts are signed by two or more parties, we would note there appears to be no exception of the requirements of the statute which provides as follows:

47-19-03. PREREQUISITES TO RECORDING INSTRUMENTS. Before an instrument can be recorded unless it belongs to a class provided for in sections 47-19-02 or 47-19-40, its execution must be established:

1. If executed by an individual, by acknowledgment by the person executing the same (Emphasis supplied)

Accordingly, it is our opinion that acknowledgment of all signatures of individuals must be shown in proper form before such an instrument can be recorded, and in the event a multiparty instrument is offered for recording, the same must be acknowledged by all persons executing same.

We trust that the foregoing general observations and expressions adequately express our opinion upon the matters submitted and that the same will answer your questions upon the matter.

Sincerely,

ALLEN I. OLSON

Attorney General