

Office of the Attorney General  
State of North Dakota

Opinion No. 82-58

Date Issued: August 2, 1982

Requested by: Charles D. Orvik  
Pierce County State's Attorney

--QUESTIONS PRESENTED--

I.

Whether, upon the death of a joint tenancy owner of real estate, a death certificate can be recorded by a registrar of deeds if no certified copy of an order of a county court or a statement of the state tax commissioner relating to the estate tax determination of the decedent's estate has been recorded.

II.

Whether, upon the death of a joint tenancy owner of real estate, the recording of a certified copy of an order of a county court or a statement of the state tax commissioner relating to the estate tax determination of the decedent's estate would satisfy the North Dakota Bar Association Title Standards if no death certificate is recorded.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that upon the death of a joint tenancy owner of real estate, a death certificate cannot be recorded by a registrar of deeds if no certified copy of an order of a county court or a statement of the state tax commissioner relating to the estate tax determination of the decedent's estate has been recorded.

II.

It is my further opinion that upon the death of a joint tenancy owner of real estate, the recording of a certified copy of an order of a county court or a statement of the state tax commissioner relating to the estate tax determination of the decedent's estate would satisfy the North Dakota Bar Association Title Standards if no death certificate is recorded.

--ANALYSIS--

I.

A register of deeds is a ministerial officer. *Rising and Isaacs v. Dickinson*, 121 N.W. 616 (N.D. 1909). The authority of ministerial officers is to be strictly construed. *Youngblood v. United States*, 141 F.2d 912 (6th Cir. 1944).

76 C.J.S. Register of Deeds § 10, at page 514, states:

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.

Section 47-19-06 of the North Dakota Century Code provides, in part, that whenever the termination of any joint tenancy in lands is concerned, a death certificate can only be recorded by a register of deeds if '. . . there has been recorded a certified copy of an order of a county court or a statement of the state tax commissioner relating to estate tax determination of said decedent's estate.'

The language of Section 47-19-06, N.D.C.C., is clear and unambiguous. In addition, state law provides that the letter of the law '. . . is not to be disregarded under the pretext of pursuing its spirit.' Section 1-02-05, N.D.C.C. Also see Sections 1-02-02 and 1-02-03, N.D.C.C.

Accordingly, no record of the termination of a joint tenancy in lands may be made by the recording of a death certificate without complying with the provisions of Section 47-19-06, N.D.C.C.

## II.

Section 47-19-06, N.D.C.C., contains no language which would prohibit the recording of an order of a county court or a statement of the tax commissioner relating to the estate tax determination of a decedent's estate upon the death of a joint tenancy owner of real estate.

Furthermore, Section 47-19-06, N.D.C.C., is the apparent basis of the North Dakota Bar Association Title Standard 11.09, which is as follows:

To establish the interest of a surviving joint tenant, the fact of death of the deceased joint owner and termination or transfer of the potential estate tax lien must be established. Death may be presumed from the filing of an estate tax clearance, release or order or may be established by death certificate or affidavit. (Emphasis supplied.)

SEE: 11.04 re. 10 year limitation on estate tax liens. As amended (1980).

Title Standard 11.09 includes a cross reference to Title Standard 11.04, which is as follows:

The North Dakota estate tax lien is limited to 10 years from the date of death. When the record does not establish that a decedent died more than 10 years prior to the examination of the title, the examiner should require evidence of record either that no tax is owed, that any tax owing has been paid or that any potential lien has been removed from the subject property.

Thus, a properly recorded estate tax clearance would satisfy the North Dakota State Bar Association Title Standards in the case of a decedent joint tenancy owner of real estate if no death certificate has been recorded.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the action of public officials until such time as the question presented is decided by the courts.

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