

LETTER OPINION
93-L-18

January 27, 1993

Mr. Doug Mattson
Ward County State's Attorney
Ward County Courthouse
Minot, ND 58701

RE: N.D.C.C. ? 50-01-01

Dear Mr. Mattson:

Thank you for your September 16, 1992 letter wherein you request an opinion concerning the appropriate document for use in implementing a portion of N.D.C.C. ? 50-01-01(2).

N.D.C.C. ? 50-01-01 concerns the duty of the county to provide poor relief to needy county residents. Subsection 2 requires that an applicant for poor relief comply with written eligibility standards established by the county social service board and provides, in relevant part:

Pursuant to this requirement, the ownership of real or personal property by an applicant for county poor relief, or by the spouse of such applicant, either individually or jointly, or of insurance on the life of the applicant does not preclude the granting of such relief if the applicant is without funds for his support. However, as a condition for the granting of county poor relief, the applicant may be required to transfer such property in trust by appropriate instrument as security for relief the applicant may thereafter receive
. . . .

While the statute provides for the transfer of several types of property, your questions concern real property.

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The statute first of all requires a transfer. A transfer is "an act of the parties or of the law by which the title to property is conveyed from one living person to another." N.D.C.C. ? 47-09-01. Because N.D.C.C. ? 50-01-01(2) makes the requirement of transfer permissive, and because the statute contemplates action by the applicant, it is apparent that a transfer by act is contemplated. The property is to be transferred "in trust by appropriate instrument as security for relief the applicant may thereafter receive." N.D.C.C. ? 50-01-01(2). A trust created for such purposes is consistent with the requirements of N.D.C.C. ? 59-03-02, concerning express trusts relating to realty. When title to real estate is taken in the name of the trustee, it is presumed that the trustee has the power to sell the real estate unless the deed to the trustee restricts that power. N.D.C.C. ? 59-03-03.1.

Enclosed with your letter were two form documents, a "trust deed," circa 1942, and a 1979 "trust mortgage."

The "trust deed" does not contain any indication that it was intended to conform to the requirements of the predecessor to N.D.C.C. ? 50-01-01 which was in effect in 1942. It does not conform to the requirements of the current law inasmuch as the property is to be held in trust "for the use and purpose of protecting and maintaining the . . . [trust property] for the benefit and use of the . . . [grantor] and her minor children." N.D.C.C. ? 50-01-01(2) requires the property to be placed in trust "as security for the relief the applicant may thereafter receive."

The 1979 form identifies N.D.C.C. ch. 50-01 and is intended to implement that statute. The form, notwithstanding its label, "trust mortgage," is in fact a deed to the county as trustee. Under the terms of the deed, the trustee is empowered to sell the property conveyed and retain from the proceeds of the sale sufficient amounts to repay the county for poor relief (referred to as "General Assistance") as well as the costs of sale. The deed restricts the power of sale by requiring that the

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recipient must first have died and that the county not have been already reimbursed for the poor relief provided.

The document has two anomalous provisions. The first provides that the document constitutes a lien in favor of the county to secure the poor relief and interest at the legal rate from six months after the recipient's death. The second provides that the conveyance shall become void if at any time the funds paid on behalf of the recipient are repaid to the county. Neither of these anomalous provisions alters the document's characteristics as a conveyance. The document otherwise conforms to the requirements of N.D.C.C. ? 50-01-01(2) in that it constitutes a transfer of property in trust as security for relief the applicant may thereafter receive.

I believe that the 1979 document could be used to satisfy the requirements of N.D.C.C. ? 50-01-01(2). If used, it should be filed and treated as a deed, rather than a mortgage. However, I suggest the document could be improved by retitling it, perhaps as "deed" or "deed to county as trustee." It would be preferable to refer to the assistance as "poor relief," the statutorily used term, rather than "general assistance." Additionally, it would be appropriate to delete the paragraph that describes the document as constituting a lien. The provision for interest at the legal rate may be retained by replacing the phrase "the principal and interest of all sums due" with the phrase "all amounts advanced as poor relief together with interest on those amounts at the legal rate, beginning six months after the death of the grantor or, if the grantors are husband and wife, as joint tenants, beginning six months after the death of either of the grantors." The terms "party of the first part" and "party of the second part" should be replaced with the terms "grantor" and "grantee." These changes would not alter the substance of the document, but would eliminate the provisions that may create confusion as to the type of document involved.

Finally, in the event that the debt is repaid, the county should issue a release, in a form acceptable for recording, to allow creation of a record of the

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voiding of the deed.

I hope this responds adequately to your inquiry.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

bln/jfl

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