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SPRINGFIELD

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FILE NO. S-513

COUNTIES:
Recorder

Honorable Alton A. Greer
State's Attorney
Gallatin County
Shawneetown, Illinois

Dear Mr. Greer:

I have your recent letter wherein you state:

"I would like your opinion as to whether the County Recorder has a right to challenge the sufficiency of a document that is presented to him for recording.

"I present to you a specific example of a document that was presented to our County Recorder for recording. Please find a copy of the document enclosed. You will note that this document does not meet the requirements of Section 198, Chapter 30, Illinois Revised Statutes, 1971 - particularly in that there is no description of the land or of the interest claimed.

"It is my interpretation of the aforesaid Section 198, Chapter 30, that if there are different persons claiming under the same notice, each one should not only sign the notice but each one should appear before a notary public and verify the notice."

Section 2 of "An Act to provide for the termination of dormant mineral interests, etc., (Ill. Rev. Stat. 1971, ch. 30, par. 198) provides:

"Any interest in oil, gas or associated hydrocarbons, liquid or gaseous, referred to in this Act may be preserved by the recording within the period specified in this Act a written notice in the recorder's office for the county where such interest is located, which notice shall be verified by oath, describe the land and the nature of the interest claimed, give the name and address of the person or persons claiming the interest, and state that such person or persons desire to preserve the interest and do not intend to abandon same. This recording of notice preserves such interest from abandonment for a period of 25 years thereafter when, if the nondormant character of the interest has not been evidenced by sale, lease, mortgage or transfer by instrument recorded in the recorder's office for the county where such interest is located, oil, gas or associated hydrocarbons, liquid or gaseous, actually produced from those lands, or from lands covered by a lease to which such interest is subject, or from lands pooled, unitized or included in unit operations therewith, or a like notice filed, such interest shall be deemed abandoned.

In the absence of prior abandonment, such interests may be preserved indefinitely by the filing of notices or by other actions evidencing nondormancy of the interest in accord with this Act at intervals of not more than 25 years."

Contrary to the statute, the document which you submitted does not contain any description of the land, nor does it completely describe the nature of the interest claimed. You have asked whether the Recorder may challenge the sufficiency of the document or must he record it. In this connection your attention is called to Opinion No. F-910 which was issued by this office on April 18, 1963, and found at p. 117 of the 1963 Illinois Attorney General's Opinions. This Opinion holds that the Recorder does not have the right to refuse to record a deed which does not have federal documentary stamps affixed thereto.

Section 9 of "An Act to revise the law in relation to recorders," (Ill. Rev. Stat. 1971, ch. 115, par. 9) provides:

"Every recorder shall, as soon as practicable after the receipt of any instrument in writing in his office, entitled to be recorded, record the same at length in the order of time of its reception, in well bound books to be provided for that purpose. * * * *"

At p. 514 of Volume 76 C.J.S., Sec. 10, Registers of Deeds, appears the following:

"Ordinarily a register of deeds is under a duty to file or record such instruments as are entitled to be filed or recorded; but in the absence of a statute to the contrary it is not his province to pass on the validity of the instruments."

In People v. Mortenson, 404 Ill. 107 at p. 111 the court said:

"Instruments affecting title to land not registered under the Torrens system will be recorded by the recorder without passing upon their validity or effect, and the extent to which such instruments affect title is left to the judgment of persons examining the record of such instruments."

Based upon the foregoing, I am of the opinion that the Recorder must record the document which you have described even though it does not contain a description of the land or a complete description of the interest claimed.

You have also asked, if more than one person claims under the same notice, whether each one should sign the notice and verify it. The statute merely says that the notice should be verified by oath. It does not say that each person claiming an interest should sign and verify it.

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The plain meaning of the language used by the General Assembly in a statute is the safest guide to follow in construing a statute. (Stiska v. City of Chicago, 405 Ill. 374.) I am therefore of the opinion that the verification on the document is adequate.

Very truly yours,

A T T O R N E Y G E N E R A L