AG & OTHER OPINIONS: Real Estate Records

Topic: Accept Affidavit To Terminate Joint Tenancy (in addition to HT-110 form, etc.)

In OAG 13-91, Attorney General Jim Doyle, answers questions of the Winnebago County Corp Counsel John Bodnar in a letter dated June 14, 1991. The main topic was that it is not proper to record a death certificate. In the same letter, Mr. Doyle states that the register is authorized by s. 706.05(1) to record an affidavit in lieu of probate proceedings. The ownership of a deceased joint tenant is terminated by operation of law; probate procedures do not act as a conveyance; instead they recognize and provide notice of what has already happened.

Topic: Assessors' Plats May Not Be Corrected by Affidavits--only by Subsequent Plat

According to 61 (OP) AG-25 (1972) in a letter to Charles M. Hill, Secretary of Department of Local Affairs and Development, January 20, 1972, "There is in fact, no need to go outside the provisions of section 70.27, Wisconsin Statutes, to find the statutory authority for amending and correcting an assessor's plat.. This section clearly requires that the amendments or corrections be accomplished by the recording of a plat rather than by other method."

Topic: Authentication or Acknowledgement of a Signature on a Lis Pendens

In response to a request of WRDA Attorney John C. Frank, in a letter dated August 13, 1996, to Jane Licht, President of the Wisconsin Register of Deeds Association states that a signature on a lis pendens which is presented for recording must bear an authentication or acknowledgment. "However, in the event that a lis pendens is presented in the traditional fashion (filed) bearing a signature which is not authenticated, it is our opinion that such a lis pendens must be accepted and filed, even though it does not meet the requirements for a recordable document." "A lis pendens certainly is an instrument which affects title to land. The requirements for record under Sec. 706.05(2) are that the instrument contains a form of authentication or acknowledgment as authorized by sec. 706.06 or 706.07, Wis. Stats. Under these two sections, any lis pendens presented for recording should have a signature which is authenticated. If a signed lis pendens contains no authentication, it is our opinion that the lis pendens must be filed by the register of deeds, even though it may not be entitled to record."

Topic: Authority to Negotiate Contracts for Copies of Daily Recordings; Fees for Electronic Copies

According to OAG 01-03, written October 2, 2003, from Attorney General Peggy A Lautenschlager to Barron County Corporation Counsel John Muench, registers of deeds entering into contracts pursuant to Wis. Stat. 59.43(2)(c) may insist on provisions protecting the identity and integrity of records obtained pursuant to such contracts and protecting the public. Authority to require provisions directly prohibiting the contracting party from selling or disseminating copies of such records is not prohibited and may reasonably be implied from the general contracting authority of sec. 59.43(2)(c). The fee requirements of Wis. Stat. 59.43(2)(b), not those of the public records statute, Wis. Stat. 19.35(3), apply to electronic copies of records obtained pursuant to Wis. Stat. 59.43(4), unless the requester has entered into a contract authorized by Wis. Stat. 59.43(2)(c).

AG & OTHER OPINIONS: Real Estate Records

Topic: Database Access not Subject to Sales Tax

According to Janet K. Abrams, Staff Specialist with the Wisconsin Department of Revenue, in a May 26, 2006, email to an accountant with Rock County, the charge to access information on a database is not a service that is subject to Wisconsin sales or use tax under sec. 77.52(2)(a), Wis. Stats.(2003-04). This answer assumes that no software is downloaded to the customer's computer and the customer is using its own Internet Service Provider to access the Register of Deed's database. If these assumptions are not correct, the tax treatment may be different.

Topic: Not Required to Record Fictitious Land Patents, Etc.

According to a letter written February 8, 1985, from Deputy Attorney General Charles Bleck to the Calument County Corp Counsel, M. E. Mellor, the register of deeds is not required to accept for filing or recording documents identified as "Allodium Freehold Title at Common Law," and "Declaration of Land Patent." "As noted in your letter, the documents do not appear to effect title. The document entitled 'Allodium Freehold Title at Common Law' is nothing more than a nonsensical and erroneous proclamation of law by the draftsman. Similarly, the document described as 'Declaration of Land Patent' does not affect title to real estate, but is essentially the legal argument of the draftsman as to the effect or consequences of a government patent." Bleck also refers to 69 (OP) AG-58 (1980) which reviewed documents purporting to affect title to real estate, designated as "Common Law Liens" and "Common Law Writs of Attachment." The AG opined that such documents were not entitled to be recorded because the instruments on their face did not affect title to land and did not fit within any of the categories of documents authorized by law to be recorded.

Topic: Notary Seals

According to Alan Lee, Assistant Attorney General, in a letter dated March 14, 1997, to Juna G. Krajewski, Secretary of State's Office not affixing the seal does not make the act void. "I conclude that Wisconsin law requires notaries to have seals or stamps, but that in the absence of a specific statute requiring the use of a seal, not affixing the seal does not make the act void." "Section 137.01(4) concerning attestations, requires that every attestation must be done by a notary public's written signature. Like section 706.07(7), it does not require the seal or stamp to be affixed."

Topic: May Not Refuse Instruments Not Meeting County Ordinance Without Enabling Law

According to OAG 6-90, written February 14, 1990 from Attorney General Donald Hanaway to Taylor County Corp Counsel Everett Hale, a register of deeds may not refuse "to record instruments recordable under state law but that are not in compliance with a county subdivision ordinance requiring the preparation of a certified survey map in connection with certain land divisions.." He refers to several other AG opinions and then states, "I conclude that a register of deeds lacks any independent statutory authority to refuse to record documents that are in

compliance with state statutes." He proceeds to quote his own prior opinion, 77 (OP) AG-262, "It is well settled that 'statutory powers and duties conferred upon a county officer cannot be narrowed, enlarged, or taken away by a county board,
unless the legislature has authorized such action." Hanaway adds the comments, "However, I perceive no liability problems if the register of deeds voluntarily alerts county zoning or platting officials that certain legal instruments should be examined for compliance with a county subdivision ordinance, or if the register of deeds voluntarily alerts the presenter of the document that such action is contemplated, provided of course, that the register of deeds does not refuse to record those legal instruments." Note that this case is very specific. When provisions of the county subdivision ordinance are authorized by state law, the register must follow those requirements in state law.

Topic: All Remainderpersons Not required to sign HT-110 Form

In OAG 2-98, Attorney General James Doyle answers a request from Ashland Corp Counsel Matthew Anich to clarify the number of signatures required on the "Termination of Decedent's Property Interest" form. "It is my opinion that all remainderpersons need not sign the form before it may be recorded...the earlier requirement that all tenants sign the DOR-drafted form stemmed from the DOR's desire to provide joint tenants with notice that tax consequences might ensue from such transfer at that time. Inheritance tax is no longer employed in Wisconsin." The 1991 (Senate Bill 342) update of 867.045 and 867.046 and the HT-110 form used today do not require that all persons receiving property thereunder must sign the application.

Topic: Documents Presented for Re-recording and Correction Instruments

On October 15, 1999 Assistance Attorney General Thomas Creeron III gave the Oneida County Corporation, Lawrence Heath, an informal written opinion (Reference #990817028) that said register of deeds should not accept documents for re-recording that had not been re-executed (signed again by grantors and authenticated or notarized). Members of the WRDA had a number of related questions and asked Mr. Heath to pose these additional questions to Assistant AG Creeron. Here are the additional questions and a summary of the AG response dated June 28, 2000.

1. Is it appropriate for a register to accept for recording deeds that the register knows or has a strong reason to believe have been changed after being signed and notarized? Answer: *No. However, the register need only to examine the document itself.* The AG provided these statutory references to support his position: 59.43(1)(a), 706.05(2)(a), and 706.05(2)(b).

2. Does your advice concerning not re-recording deeds which have obviously been altered after being recorded apply to other conveyances? Answer: *Yes. The statutes make no distinction between deeds and other conveyances.*

3. If a recorded document is changed and subsequently re-signed and re-notarized, may it be accepted for recording? Answer: *Yes.*

4. Should a document be accepted for recording that contains whiteout but meets all recording requirements? Answer: *Yes.*

5. In the event that a separate correction document is recorded, should it refer to the previous document, which is being corrected? Answer: *It should, but this is not a recording requirement* [except in the case of any document that modifies a mortgage or land contract as per 706.05(2m)(a).]

6. May a register add information regarding the previous document a correction instrument is supposed to correct? Answer: *No.*

7. May an affidavit of correction be used to correct documents? Answer: *Yes. The effectiveness of any particular affidavit will have to be determined by the title examiner.*

8. In what circumstance should the real property lister make a change in his or her records where real property legal descriptions are corrected by means of a correction deed or correction affidavit? Answer*: The real property lister must reflect such changes if directed to do so by county board resolution under s. 70.09(2)(a)2.* [However,] *the resolution may impart considerable discretion as to how to proceed.*

Topic: County Board Cannot Direct the Register of Deeds to Refuse Restrictive Covenants Which May Be Illegal

In OAG 59-88, Attorney General Donald Hanaway answered questions of the Dane County Corp Counsel, Cal Kornstedt. A Dane County supervisor proposed an ordinance requiring the register of deeds to review all deed restrictions for legality, reject those which discriminate, and to post notices on volumes and copies stating that certain deed restrictions may be illegal and void. Hanaway opined that the Federal Fair Housing Act was inapplicable. "Section 66.432 therefore does not authorize a county board to enact ordinances prohibiting the recording of deeds or requiring the register of deeds to place notices on liber volumes and copies of real estate documents, directing the public's attention to the possibility that such covenants may be legally unenforceable." He went on to state that the register of deeds and the county board have an obligation to ensure that they are in compliance with applicable state and federal statutes. "However, the method of compliance contemplated by the county board in this instance is not within the scope of its state constitutional and statutory authority."

Topic: Real Estate Transfer Return is Confidential

According to Allan P Hubbard, Chief Counsel for the Wisconsin Department of Revenue (DOR), in a letter dated February 8, 1990, to Thomas Rostad of Dane County Title Company, Inc., Section 77.23(2) of Wisconsin Statutes provided that the returns "are privileged information, subject to the exceptions noted." Hubbard refused to give copies of the information to Rostad.

AG & OTHER OPINIONS: Real Estate Records

The DOR has been authorized and now sells databases of street addresses, the types of conveyance and the sale prices to appraisers and others; however by the time the DOR can generate this information, it is at least one year old. The hope is that with the new imaging and OCR system, this information can be more timely. Of course customers can get the same information in our offices from indexes.

Topic: Multiple listings on <u>Trust Indentures</u>

In a November 1, 2000, letter from Mari Nahn, an attorney for Alliant Energy, to Kay Walsh, President of WRDA, Ms. Nahn explained that “despite some admittedly confusing language in the Partial Release form, the Indenture is not a mortgage, no monies are paid to the Trustee upon the sale of any property covered by the indenture and each recording of the transaction or change of trustee is a Supplement to the original, not a separate transaction or financing of a particular piece of property.” She further explained “Section 59.43 (2) (ar) provides that "No person may record...a single instrument that contains more than one mortgage, or more than one mortgage, being assigned, partially released or satisfied." As I explained, we are not looking for an exemption for utilities from the
requirements of this provision, nor is there one in the statute. By releasing one piece of property from one Indenture, albeit one that has been supplemented a number of times, we are in compliance with the
statute. By the partial release, we are not attempting to release more than one mortgage (assuming for the purposes of argument that an Indenture is a mortgage), nor are we attempting to record more than one mortgage. The amended partial release form will show, as provided in the Original Indenture Agreement, that one piece of property is being released from one Indenture, as supplemented, or that one piece of property is being added to one Indenture, as supplemented.”

Topic: May use HT-110 for <u>Vendee’s Interest</u> in a Land Contract

In OAG 1-97, a letter dated January 14, 1997, to the Villas County Corp Counsel William Glaves, AG Jim Doyle states: “In my opinion, regardless of the fact that the statute does not expressly refer to a vendee’s interest in a land contract, a vendee under a standard land contract who is a joint tenant may use the procedure in section 867.045, to perfect the record as to the termination of a deceased joint vendee’s interest.. A land contract vendee who is a joint tenant possesses ‘an interest as a joint tenant or life tenant in...real property’ within the scope of section 867.045.” Doyle concludes his remarks stated that “It follows that the interest of a land contract vendee who is a joint tenant also terminates as a matter of law upon his or her death ... a vendee under a standard land contract who is a joint tenant may use the procedure in section 867.045(1), upon the death of another joint tenant, to perfect the record of transfer of title to the surviving vendee.”

AG & OTHER OPINIONS: Real Estate Records

Topic: Recordability of Documents Written in a Language other than English

Per Mary Kasparek in an email to Jane Licht (now retired ROD) dated 3/8/2005: You asked about how to record documents written in a language other than English. I have done some research and am also of the opinion that the original, properly notarized document should be recorded, along with an English translation containing a notarized statement by the person who translated the document attesting to the fact that it is a full, true and correct translation of the document (in other words, that the document is what it purports to be). I did not find anything either in the statutes or case law that addresses this issue directly, but looked at sec. 59.43, Chapter 706, the open records law, case law and WI rules of evidence to address your question.

A record is defined both in the DC ordinances and the statutes as "any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority". (emphasis added). Notarial acts have the same effect if performed in Wisconsin, in another jurisdiction or foreign country or under federal authority. Both the federal and the Wisconsin rules of evidence require that documents must be authenticated before they can be admitted into evidence.

Sec. 59.43 identifies the documents which must be recorded by the Register of Deeds (R.O.D.). It also requires the ROD to index the information which is recorded, which implies that the contents of the documents must be known and must comport to the statutory standards.

Reading all these rules together, filing or recording the original notarized document along with a translation of the document including a notarized statement by the translator, should satisfy the statutory requirements.

Topic: May the register of deeds exclusively maintain electronic copies of documents recorded by the office and discard any paper documents once the documents are converted into electronic form?

Yes. The Uniform Real Property Electronic Recording Act, codified as §706.25, stats., provides that the register of deeds may convert paper documents into electronic documents and archive the electronic documents. Documents stored in micro-fiche and computer file forms likely qualify as existing in an electronic form and the paper copies of those electronic documents may be discarded. See, Wis. Stat. §706.25(1)(b). The register of deeds may convert any paper documents currently stored by the department into an electronic document and discard the paper document. Wis. Stat. §706.25(3)(a)(3)-(4). Chuck Stertz, Dane Co Corp Council 7/16/2007. ***(attached)***

AG & OTHER OPINIONS: Real Estate Records

Topic: The register of deeds is NOT required to record documents that are in their opinion "frivolous."

This is according to the OAG-04-12 ***(attached)*** from Grant P. Thomas, Door County Corporation Counsel dated December 11, 2012.Thomas opined that such documents were not entitled to be recorded because the instruments on their face did not affect title to land and did not fit within any of the categories of documents authorized by law to be recorded.

Topic: A current Register of Deeds does not have the authority to correct and original recording of a deed made by a previous Register of Deeds.

Attorney General Opinion 61 ***(attached)*** from Attorney General 189: A Register of Deeds, while in office, is authorized under the law to alter or amend his/her own records to correct errors which he/she has made. That ability ends with the termination of the office.