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Recording of Deed Copy

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QUESTION:

You have asked if a certified copy of a deed conveying real property may be recorded if the original of the instrument has been lost in the mail or otherwise disappeared contrary to the desire of the grantor.

CONCLUSION:

Copies of deeds may be recorded in lieu of the original instrument only if the copy which is recorded is of a deed already recorded in a different recording district.

Alaska statutes authorize recording of copies of such conveyances only in special circumstances. The pertinent statute is found in AS 34.15.260 which states as follows:

RECORDING CONVEYANCES AND CONVEYANCES AS EVIDENCE. (a) A conveyance that is acknowledged, proved or certified in the manner prescribed in secs. 150-250 of this chapter (1) may be read in evidence without further proof of the conveyance, (2) may be recorded in the recording district in which the land is located, and (3) from the time it is filed with the recorder for record, it is constructive notice of the contents of the conveyance to subsequent purchasers and mortgagees of the same property or any part of it.

(b) A certified copy of a recorded conveyance may be recorded in any other recording district and when so recorded has the same force and effect, from the time it is filed for recording, as though it were the original conveyance.

(c) Where an original conveyance is recorded in a recording district in which the property is not located, a certified copy of the recorded conveyance may be recorded in the recording district where the property is located with the same force and effect, from the time it is filed for recording, as though the original conveyance had been recorded.

This means that a copy of a deed can be accepted for recording if the original has been recorded in another district. No provision is made for the acceptance of a certified copy for recording unless it is substantiated by the original conveyance having been filed for recording elsewhere.

The references to sections 150-250 in the above quoted statute relate only to the authority for the acceptance of original documents. These prerecording steps consist of the draft and delivery of the conveyance by the grantor to the grantee (execution); and the submission of the instrument to an officer by one of the parties (acknowledgment). If the conveyance is submitted by a person other than a party to the instrument, it must be proved by the statement of a subscribing witness, or in the Superior Court by the handwriting of the grantor and of a subscribing witness. Certification is an endorsement by the officer taking the proof.

Generally speaking, copies of deeds may be recorded only if specifically authorized by state law.

In Bates vs. Bates, 24 So.2d 440, the Alabama Supreme Court rules that the only copy of an instrument acceptable for recording was one made by a state official, not that certified ex parte by a notary.

The copy of the deed sent to you was certified by a notary public in the employ of the grantor who in the language of Bates had "no official connection with or jurisdiction of the document." The Alabama statute parallels that of Alaska and does not permit the recording of copies unless the original has been "or may hereafter be" recorded in another district.

In McPhaul v. Lapsley, 22 Law Ed. 344 (1874) the U. S. Supreme Court upheld under Spanish and Texas law the recording of a testimonio or second copy made by an officer by whom the original instrument was executed. The court declared such a copy has the same validity and effect as the original only because it was so provided by the Texas statutes.

The Alaska statutes contain no such provision. It would seem, therefore, that even if a certified copy of a lost deed were accepted for recording, it would not serve to give notice of the conveyance to third parties.

The only Alaska statute authorizing a recording of copies of instruments whose originals are not recorded in another district is AS 34.15.340 which provides as follows:

The following instruments may be recorded in the office of the recorder of the recording district in which the land is located in the same manner and with the same effect as a conveyance of land acknowledged, proved or certified (6) an exactly conformed copy of a lease of contract [sic], or option to purchase real property when the party certifies under oath that the exactly conformed copy was received by him in the course of the transaction, that the original is not in his possession and that the instrument offered for recordation is an exact duplication.

The provision of this statute would not apply to a copy of a deed, so in a situation described in your request, the State of Alaska must have an original conveyance recorded in order to protect it against the claims of third parties.

The Alaska recording statutes have been reiterated by the Administrative Director of the Alaska Court System. In an Administrative Office Bulletin, No. 66-1, January 7, 1966, these instructions were issued and state in part as follows:

(1) . . . Only fully-executed, original documents should be accepted for recording. . . .

In conclusion, copies of deeds cannot be accepted for recording unless an executed and acknowledged original has been recorded in another recording district.

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