

CHAPTER 47-19 RECORD TITLE

47-19-01. Instruments entitled to record.

Any instrument affecting the title to or possession of real property may be recorded as provided in this chapter.

47-19-02. Instruments entitled to record without acknowledgment.

The following instruments may be recorded without acknowledgment or further proof:

1. An instrument issued by an agency, bureau, department, or the judiciary of the United States, this state or a political subdivision of this state, or an Indian tribe recognized by the United States department of the interior. An instrument includes a contract or agreement that is entered by one of these governmental entities that contract or agreement is deemed to have been issued by the entity.
2. An instrument certified by an agency, bureau, department, or the judiciary of the United States or a foreign government, a state of the United States or a political subdivision of a state, or an Indian tribe recognized by the United States department of the interior.
3. A lis pendens or other instrument that is signed by an attorney at law licensed to practice law in this state which bears the attorney's identification number issued by the state board of law examiners.
4. An affidavit that bears a jurat or verification upon oath or affirmation.
5. A Uniform Commercial Code financing statement under title 41.
6. A plat signed by a land surveyor registered in this state.

47-19-03. Prerequisites to recording instruments.

Before an instrument can be recorded, unless it belongs to a class provided for in section 47-19-02 or 47-19-40, its execution must be established:

1. If executed by an individual, by acknowledgment by the person executing the same;
2. If executed by a corporation or limited liability company, by execution and acknowledgment by the person or persons authorized to execute instruments under section 47-10-05.1;
3. By proof by a subscribing witness as is provided by section 47-19-22; and
4. By proof of the handwriting of the person executing an instrument and of a subscribing witness thereto as is prescribed by sections 47-19-23 and 47-19-24 and filing of the original instrument in the proper office there to remain for public inspection.

Except as otherwise provided by the law of this state or the law of the state in which the instrument or document was executed, before an instrument may be recorded, the document and any acknowledgment must be executed with an original signature.

47-19-03.1. Deeds and contracts for deeds to include name and address of drafter of legal description.

The recorder may not record a deed or contract for deed containing a metes and bounds legal description which affects the title to or possession of real property that otherwise may be recorded under this chapter unless the name and address of the individual who drafted the legal description contained in the deed or contract for deed appears on the instrument in a legible manner. A deed or contract for deed complies with this section if it contains a statement substantially in the following form: "The legal description was prepared by _____ (name) _____ (address) or obtained from a previously recorded instrument." This section does not apply to any instrument executed before January 1, 2000, or any instrument executed or acknowledged outside the state. The validity and effect of the record of any instrument in a recorder's office may not be lessened or impaired by the fact the instrument does not contain the statement required by this section.

47-19-04. Recording of transfers by mortgage.

Transfers of or liens on property by way of mortgage are required to be recorded in the cases specified in title 35.

47-19-05. Recording of deed - Post-office and street address of grantee must be shown.

No deed in which real estate is described shall be received for record by any recorder in this state if the post-office address, and any known or existing street address if within the corporate boundaries of a city, of each grantee named in such deed is not shown. Failure to have included any address on a recorded deed shall not defeat the doctrine of constructive notice.

47-19-06. Death certificates - Joint tenant - Prima facie evidence of termination of estate held.

In all cases of joint tenancy in lands, and in all cases where an estate, title, or interest in, or lien upon, lands has been or may be created, which estate, title, interest, or lien was or is to continue only during the life of any person named or described in the instrument by which the estate, title, interest, or lien was created, a copy of the death certificate of the joint tenant or of the person upon whose life the estate, title, interest, or lien was or is limited, duly certified by any officer who is required by the laws of the state or country in which the record is made, to keep a record of the death of persons occurring within the jurisdiction of the officer, may be recorded in the office of the recorder of the county in which the lands are situated. The legal description of any property to which the recording of the death certificate relates must be attached to the death certificate. The certified copy of death certificate, or the record thereof in the office, or a duly certified copy of the last mentioned record, is prima facie evidence of the death of the person and the termination of the joint tenancy and all the estate, title, interest, and lien as was or is limited upon the life of that person.

47-19-07. Place for recording instruments - Fee endorsed.

An instrument entitled to be recorded must be recorded by the recorder of the county in which the real property affected thereby is situated. The recorder in each case must endorse the amount of the fee for the recording on the instrument recorded.

47-19-08. When instrument is deemed recorded.

An instrument is deemed to be recorded when, whether entitled to record or not, it is deposited with the proper officer for record, if such instrument is subsequently recorded.

47-19-09. Recording instruments in unorganized counties.

Any unorganized county of the state, for the purpose of filing and recording all deeds, mortgages, and other instruments, shall be attached to and made a part of the county to which it is attached for judicial purposes as long as such county remains unorganized.

47-19-10. Separate records for grants and mortgages.

Grants, absolute in terms, are to be recorded in one set of records and mortgages in another.

47-19-11. Chain of title - Variations in spelling - Affidavit to cure.

Wherever in the record of title to real estate, there appears in the chain of title any variation in the spelling of the name of any person appearing in such chain of title, in any instrument affecting the title to the real estate, or where any grantor, mortgagor, vendor, lessor, or other maker of any such instrument, signs without the joinder of the spouse, any person may make an affidavit setting forth therein:

1. That the person personally is cognizant of the facts stated by the person in such affidavit;
2. The identity of any person appearing in such chain of title under names varying in the spelling thereof or in the use of initials; and

3. Whether or not, at the time of the transfer or encumbrance to which the affidavit relates, the land described therein was or was not the homestead of the grantors, mortgagors, vendors, or the persons whose title is divested or encumbered, wholly or in part, or in any way affected by such transfer or conveyance.

47-19-12. Affidavit entitled to record.

The affidavit provided for in section 47-19-11, duly verified according to law and containing a description of the land to which it relates, may be recorded in the office of the recorder of any county in this state, and such affidavit, when so recorded, shall be prima facie evidence of the truth of the facts set forth or contained therein.

47-19-13. Acknowledgment and proof - Persons authorized to make - Statewide jurisdiction.

The proof or acknowledgment of an instrument may be made at any place within this state before a judge, or the clerk, of the supreme court, or a notary public.

47-19-14. Acknowledgment and proof - Limited to district of officer.

The proof or acknowledgment of an instrument may be made in this state within the judicial district, county, subdivision, or city for which the officer was elected or appointed, before:

1. A judge or clerk of a court of record;
2. A mayor of a city;
3. A recorder;
4. A United States commissioner;
5. A county auditor; or
6. A township clerk or a city auditor.

47-19-14.1. Recognition of notarial acts.

Repealed by S.L. 2011, ch. 334, § 6.

47-19-14.2. Authentication of authority of officer.

Repealed by S.L. 2011, ch. 334, § 6.

47-19-14.3. Certificate of person taking acknowledgment.

Repealed by S.L. 2011, ch. 334, § 6.

47-19-14.4. Recognition of certificate of acknowledgment.

Repealed by S.L. 2011, ch. 334, § 6.

47-19-14.5. Certificate of acknowledgment.

Repealed by S.L. 2011, ch. 334, § 6.

47-19-14.6. Short forms of acknowledgment.

Repealed by S.L. 2011, ch. 334, § 6.

47-19-14.7. Prior acknowledgments not affected.

Repealed by S.L. 2011, ch. 334, § 6.

47-19-14.8. Short title.

Repealed by S.L. 2011, ch. 334, § 6.

47-19-15. Acknowledgment and proof without state but within United States - Officers qualified.

Repealed by S.L. 1971, ch. 453, § 10.

47-19-16. Acknowledgment and proof - Without the United States - Officers qualified.

Repealed by S.L. 1971, ch. 453, § 10.

47-19-17. Acknowledgment and proof before commissioned officer of armed forces - Conditions.

Repealed by S.L. 1971, ch. 453, § 10.

47-19-17.1. Persons authorized to administer oaths and take acknowledgments.

Repealed by S.L. 1971, ch. 453, § 10.

47-19-17.2. Validating certain oaths and acknowledgments.

Repealed by S.L. 1971, ch. 453, § 10.

47-19-18. Deputies may take acknowledgments.

When any officer mentioned in section 47-19-14 is authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy in the name of the principal as deputy, or by such deputy as deputy.

47-19-19. Effect of recording.

The record of any instrument shall be notice of the contents of the instrument, as it appears of record, as to all persons.

47-19-20. Identity of person acknowledging - Proof required.

The acknowledgment of an instrument must not be taken unless the officer taking it knows or has satisfactory evidence on the oath or affirmation of a credible witness that the person making the acknowledgment is the individual who is described in and who executed the instrument, or if executed by a corporation or limited liability company, that the officer or manager making such acknowledgment is authorized to make it as provided in section 47-10-05.1.

47-19-21. Proof of an unacknowledged instrument - Method.

Proof of the execution of an instrument when not acknowledged may be made:

1. By the party executing it;
2. By a subscribing witness; or
3. By other witnesses in cases mentioned in sections 47-19-23 and 47-19-24.

47-19-22. Knowledge required by officer of subscribing witness in taking proof.

If proof of the execution of an instrument is made by a subscribing witness, such witness must be known personally to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness or must be proved to be such by the oath of a credible witness. The subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, that such person executed it, and that the witness subscribed the witness's name thereto as a witness.

47-19-23. Proof by handwriting - When received - Requirements.

The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

1. When the parties and all the subscribing witnesses are dead;
2. When the parties and all the subscribing witnesses are nonresidents of the state;
3. When the place of their residence is unknown to the party desiring the proof and cannot be ascertained by the exercise of due diligence;
4. When the subscribing witness is concealed, or cannot be found by the officer by the exercise of due diligence in attempting to serve a subpoena or attachment; or
5. In case of the continued failure or refusal of the witness to testify for the space of one hour after the witness's appearance.

47-19-24. Proof by handwriting - Facts required.

The evidence taken under section 47-19-23 must prove to the officer satisfactorily the following facts:

1. The existence of one or more of the conditions mentioned therein;
2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, that the witness is well acquainted with that person's signature, and that it is genuine;
3. That the witness testifying personally knew the person who subscribed the instrument as a witness, that the witness is well acquainted with the instrument witness's signature, and that it is genuine; and
4. The place of residence of the witness testifying.

47-19-25. Certificate of proof - Contents.

An officer taking proof of the execution of an instrument must set forth in the officer's certificate, endorsed thereon or attached thereto:

1. All the matters required by law to be done or known by the officer;
2. All the matters required by law to be proved before the officer on the proceeding;
3. The names of all the witnesses examined before the officer;
4. The place of residence of all witnesses examined before the officer; and
5. The substance of the evidence given by witnesses examined before the officer.

47-19-26. Certificate of acknowledgment - Forms.

An officer taking an acknowledgment of an instrument within this state must endorse on, or attach to, the instrument a certificate substantially in the forms prescribed in sections 47-19-27, 47-19-28, 47-19-29, and 47-19-30 or in subsections 1 and 2 of section 44-06.1-19.

47-19-27. General certificate of acknowledgment.

A certificate of acknowledgment, unless otherwise provided in this chapter, must be in substantially the following form:

STATE OF NORTH DAKOTA)
County of _____)

On this ____ day of _____, in the year _____ before me personally appeared _____, known to me (or proved to me on oath of _____) to be the person who is described in and who executed the within instrument, and acknowledged to me that that person (or they) executed the same.

47-19-28. Certificate of acknowledgment executed by a corporation.

The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

STATE OF NORTH DAKOTA)
County of _____)

On this ____ day of _____, in the year _____ before me (here insert the name and quality of the officer), personally appeared _____, known to me (or proved to me on oath of _____) to be the president (or other officer or person) of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

47-19-28.1. Certificate of acknowledgment executed by a limited liability company.

The certificate of acknowledgment of an instrument executed by a limited liability company must be substantially in the following form:

STATE OF NORTH DAKOTA)
County of _____)

On this ____ day of _____, in the year _____ before me (here insert the name and quality of the manager), personally appeared _____, known to me (or proved to me on oath of _____) to be the president (or other manager or person) of

the limited liability company that is described in and that executed the within instrument, and acknowledged to me that such limited liability company executed the same.

47-19-29. Certificate of acknowledgment by an attorney in fact.

The certificate of acknowledgment by an attorney in fact must be substantially in the following form:

STATE OF NORTH DAKOTA)

County of _____)

On this _____ day of _____, in the year _____ before me (here insert the name and quality of the officer), personally appeared _____, known to me (or proved to me on the oath of _____) to be the person who is described in and whose name is subscribed to the within instrument as the attorney in fact of _____ and acknowledged to me that that person subscribed the name of _____ thereto as principal and that person's own name as attorney in fact.

47-19-30. Certificate of acknowledgment by deputy sheriff.

All acknowledgments of deeds or other instruments in writing made by any deputy sheriff of this state shall be made substantially in the following form:

STATE OF NORTH DAKOTA)

County of _____)

On this _____ day of _____, in the year _____ before me, a _____, in and for said county, personally appeared _____, known to me to be the person who is described in and whose name is subscribed to the within instrument as deputy sheriff of said county and acknowledged to me that that person subscribed the name of _____ thereto as sheriff of said county and that person's own name as deputy sheriff.

47-19-31. Certificate of acknowledgment before commissioned officer of armed forces.

Repealed by S.L. 1971, ch. 453, § 10.

47-19-32. Certification of acknowledgments or proof of instruments - Officer's certificate - How authenticated.

An officer taking and certifying an acknowledgment or proof of an instrument for record must authenticate the officer's certificate by affixing thereto:

1. The officer's signature followed by the name of the officer's office; and
2. The officer's seal of office, if by the laws of the territory, state, or country where the acknowledgment or proof is taken, or by authority of which the officer is acting, the officer is required to have an official seal.

A judge or clerk of a court of record must authenticate that officer's certificate by affixing thereto the seal of the judge's or clerk's court. A mayor of a city must authenticate that officer's certificate by affixing thereto the seal of the mayor's city.

47-19-33. Prohibition on self-interested individuals from proving documents.

An individual authorized by law to take or receive the proof or acknowledgment of the execution of an instrument or affidavit and to certify to the same may not take or receive the proof, acknowledgment, or affidavit or certify to the same if that individual is a party to the instrument or a member of any partnership that is a party to the instrument, or if the husband or wife of that individual is a party to the instrument. An acknowledgment taken or received in violation of this section is invalid.

47-19-34. Proof and acknowledgment of instruments as to corporations and limited liability companies.

No provision in any of the laws of this state, relating to the proof and acknowledgment of instruments and the taking of affidavits, shall be construed to invalidate or affect the proof or acknowledgment, affidavit, or the certificate thereof, of any instrument to which a corporation or

limited liability company may be a party and which shall have been or may be proven, acknowledged, sworn to before, or certified to by, an officer, manager, or person authorized by law, who may be an officer, director, governor, manager, employee, stockholder, or member of such corporation or limited liability company. No person otherwise qualified or authorized by law to take and receive the proof or acknowledgment of an instrument or affidavit and to certify thereto shall be disqualified by reason of being an officer, director, employee, or stockholder of any corporation or a manager, governor, employee, or member of any limited liability company which is a party to such instrument, and such proof, acknowledgment, and certificate thereof shall be valid for all purposes.

47-19-35. Persons authorized to take acknowledgments and affidavits.

All officers and persons, authorized by law to take the proof or acknowledgment of an instrument or affidavit and to certify thereto, may take such proof or acknowledgment and certify to the same in any case not prohibited by this chapter.

47-19-36. Authority of officers in taking proof.

Officers authorized to take the proof of instruments are authorized in such proceedings:

1. To administer oaths or affirmations;
2. To employ and swear interpreters; and
3. To issue subpoenas, obedience to which may be enforced as provided by title 28.

47-19-37. Acknowledgment before county judge - Certificate of clerk of court.

Repealed by S.L. 1987, ch. 557, § 1.

47-19-38. Action to correct certificate of acknowledgment.

When the acknowledgment or proof of execution of an instrument is made properly but is defectively certified, any party interested may institute an action in the district court to obtain a judgment correcting the certificate.

47-19-39. Action to prove certificate of acknowledgment.

Any person interested under an instrument entitled to be proved for record may institute an action in the district court against the proper parties to obtain a judgment proving such instrument.

47-19-40. What entitles judgment to record.

A certified copy of the judgment in a proceeding instituted under sections 47-19-38 and 47-19-39 showing the proof of the instrument and attached thereto entitles the instrument to record with like effect as if acknowledged.

47-19-41. Effect of not recording - Priority of first record - Constructive notice - Limitation and validation.

An unrecorded conveyance of real estate is void as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate or any part of the same real estate, regardless of whether recorded in the form of a warranty deed or deed of quitclaim and release or the form in common use first is recorded or as against an attachment on the property or judgment, against the owner of record, before the recording of the conveyance. The fact that the first recorded conveyance is a quitclaim deed does not affect the question of good faith of the subsequent purchaser, or be of itself notice of any unrecorded conveyance of the same real estate or any part of the same real estate. This section is notice to all who claim under unrecorded instruments that prior recording of later instruments may nullify their title to or lien on affected real property. An action affecting any title to or lien on real property may not be commenced or defense or counterclaim asserted on the ground that a recorded instrument was not entitled to be recorded. The record of all instruments whether or not entitled to be recorded is deemed valid and sufficient as the legal record of the instruments.

47-19-42. Conveyance defined.

The term "conveyance" as used in section 47-19-41 shall include every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or encumbered, or by which the title to any real property may be affected, except a will or power of attorney.

47-19-42.1. Validity of conveyance by trust or estate.

A conveyance is not void or voidable solely because the grantee in the conveyance is a trust, rather than the trustee of the trust, or is an estate, rather than the personal representative of the estate, if the identity of the grantee is reasonably ascertainable from the conveyance or from other information of public record, or from both.

47-19-43. Purchaser defined.

The word "purchaser" as used in section 47-19-41 shall include every person to whom any estate or interest in real estate is conveyed for a valuable consideration, and also every assignee of a mortgage, lease, or other conditional estate.

47-19-44. Requisites of instrument to revoke power to convey.

No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation also is acknowledged or proved, certified, and recorded in the same office in which the instrument containing the power was recorded.

47-19-45. Record - Constructive notice of execution - Instruments recorded admissible in evidence without further proof.

The depositing with the proper officer for record of any instrument shall be constructive notice of the execution of such instrument to all purchasers and encumbrancers subsequent to such depositing, if such instrument is subsequently recorded. All instruments entitled to record, the record of all instruments, or a duly certified copy of such record, shall be admissible in evidence in all the courts of this state and may be read in evidence in all of the courts of this state without further proof.

47-19-46. Unrecorded instrument valid between parties - Knowledge of instruments out of chain of title.

An unrecorded instrument is valid as between the parties thereto and those who have notice thereof. Knowledge of the record of an instrument out of the chain of title does not constitute such notice, provided, however, that the record of a mortgage, deed, or other conveyance prior to the recording of a deed or other conveyance vesting title of record in the mortgagor or grantor shall not be considered out of the chain of title after the recording of a deed or other conveyance vesting title in the mortgagor or grantor in such first recorded mortgage, deed, or other conveyance.

47-19-47. Registration of farm names authorized - Certificate.

Any owner of a farm in the state may have the name of the person's farm, together with a description of the person's land to which said name applies, recorded in a register kept for that purpose in the office of the recorder of the county in which said farm is located. The recorder shall furnish to such landowner a certificate setting forth the name and the description of said land. When any name shall have been recorded as the name of any farm in such county, the name shall not be recorded as the name of any other farm in the same county.

47-19-48. Transfer of farm may include registered name.

When any owner of a farm, the name of which has been recorded as provided in section 47-19-47, the owner's heirs, executors, or administrators, transfers by deed or otherwise, the whole of such farm, such transfer may include the registered name thereof. If it is desired to transfer only a portion of such farm, the registered name thereof shall not be transferred to the purchaser unless so stated in the deed of conveyance.

47-19-49. Cancellation of registered name.

Whenever any owner of a registered farm, or the owner's heirs, executors, or administrators, desires to cancel the registered name thereof, it shall be accomplished in the same manner as is provided for cancellation of real estate mortgages.

47-19-50. Filing bill of sale - Prerequisites.

A bill of sale or other instrument transferring the title to personal property shall be entitled to be filed in the office of the recorder of the county where the property, or any part thereof, covered by such instrument is at the time situated when:

1. The instrument is signed by the vendor or transferor in the presence of two witnesses who must sign the same as witnesses thereto; or
2. The execution of the instrument is acknowledged before some official qualified to take acknowledgments.

47-19-51. Filing of bill of sale or other instrument - Notice.

The filing of a bill of sale or other instrument which transfers the title to personal property shall operate as notice thereof to all subsequent purchasers and encumbrancers of so much of said property as is situated, at the time of such filing, in the county wherein such instrument is filed.

47-19-52. Bill of sale - Release - Cancellation by recorder.

The recorder shall cancel and discharge, upon the records in the recorder's office, any bill of sale, upon the filing of a release executed by both parties to the instrument.

47-19-53. Recording petition, decree of adjudication, or order approving trustee's bond in bankruptcy proceeding.

When a petition for bankruptcy, or a decree of adjudication, or an order approving the trustee's bond is made, pursuant to the Federal Bankruptcy Act of 1898, as amended by the Bankruptcy Act of 1938, Chapter 575, 52 Statutes 840, Section 21g, the bankrupt, trustee, receiver, custodian, referee, or any creditor may record a certified copy of the petition, decree, or order in the office of the recorder of any county in this state wherein is located real property of the bankrupt as shown by the schedules of the bankruptcy proceedings.

47-19-54. Sale of real property by contract for deed - Effect on joint tenants.

Any contract for deed for the sale of real property held in joint tenancy shall not have the effect of dissolving the joint tenancy relationship of the vendors if such contract for deed is executed by all the joint tenants unless otherwise specifically provided in the instrument.

47-19-55. Authority of North Dakota notaries in other states.

A North Dakota notary may perform a notarial act in another state if that state recognizes the notary's authority within that state.

47-19-56. Corporate change noted in assignment, satisfaction, or release.

When a change in the name or identity of a corporate mortgagee or assignee of the mortgagee is caused by or results from a merger, consolidation, amendment to charter or articles of incorporation, or conversion of articles of incorporation or charter from federal to state, from state to federal, or from one form of entity to another, a mortgage assignment, satisfaction, or release that is otherwise recordable and that specifies in the body of the instrument the merger, consolidation, amendment, or conversion event causing the change in name or identity is in recordable form. The assignment, satisfaction, or release is entitled to be recorded in the office of the county recorder without further evidence of corporate merger, consolidation, amendment, or conversion. For purposes of assigning, satisfying, or releasing the mortgage, the assignment, satisfaction, or release is prima facie evidence of the facts stated in it with respect to the corporate merger, consolidation, amendment, or conversion, and the county recorder shall rely upon it to assign, satisfy, or release the mortgage.

47-19-57. Authority of mortgagee designated as nominee or agent - Retroactive application.

1. An assignment, satisfaction, or release is entitled to be recorded in the office of the county recorder and is sufficient to assign, satisfy, or release a mortgage if:
 - a. A mortgage is granted to a mortgagee as nominee or agent for a third party identified in the mortgage, and the third party's successors and assigns;
 - b. A subsequent assignment, satisfaction, or release of the mortgage is executed by the mortgagee or the third party, its successors or assigns; and
 - c. The assignment, satisfaction, or release is in recordable form.
2. The county recorder shall rely upon the recorded assignment, satisfaction, or release in subsection 1 to assign, satisfy, or release the mortgage.
3. This section applies to any mortgage assignment, satisfaction, or release executed, recorded, or filed before, on, or after August 1, 2009.