

**N.D.A.G. Letter to Renner (April 26, 1985)**

April 26, 1985

Mr. Jerry Renner  
Kidder County State's Attorney  
Kidder County Courthouse  
Steele, North Dakota 58482

Dear Mr. Renner:

Thank you for your letter of March 26, 1985, inquiring as to whether a sheriff must issue a sheriff's deed to the purchaser of property which was the subject of the foreclosure of a second mortgage following the expiration of the redemption period.

N.D.C.C. 32-19-09 states that following the expiration of the time for redemption following the sale of property pursuant to the foreclosure of a real estate mortgage, the person making the sale "must issue a deed of such property to the purchaser." The act of the issuance of the sheriff's deed is a ministerial act required to complete a formal transfer of the legal title and does not involve any discretion on the part of the sheriff. State v. Herman, 161 N.W. 1017 (N.D. 1917).

As to your concern over the rights of the first mortgagee, it would appear that such lien is not affected by this sale or the sheriff's deed as the mortgage is a covenant against the land. In Leverson v. Olson, 142 N.W. 917 (N.D. 1913), the North Dakota Supreme Court stated the following:

"Liens prior to the one under which the sale was made are, of course, in no manner affected by such sale, and the holders thereof need no such Legislative protection. Why should the person redeeming be required to pay such prior liens if, perchance, it happens that the person from whom such redemption is made is the holder thereof, when he is not required to pay the same when held by someone else? A construction requiring such payment would enable the holder of a first mortgage, which has a long time to run, to become the purchaser at the sale under a junior lien, and thus compel the debtor or redemptioner to pay such first mortgage in order to effect a legal redemption from the sale under the junior mortgage. This might work in a manifest hardship and injustice in many cases without any corresponding benefit to any one."

Id at 918.

Assuming only the second mortgage was bid by the purchaser at the sheriff's sale, the purchaser receives a sheriff's certificate and, at the expiration of the redemption period, a sheriff's deed. The purchaser then has the same title the mortgagor had prior to the sale.

In other words, title to the land remains subject to the first mortgage. See N.D.C.C. 28-24-14.

Sincerely,

Nicholas J. Spaeth

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