

## CHAPTER 386

## REGISTER OF DEEDS

**386.01 BOND.**

**HISTORY.** 1849 c. 21 s. 2; R.S. 1851 c. 8 art. 2 s. 2; P.S. 1858 c. 7 s. 20; G.S. 1866 c. 8 s. 153; G.S. 1878 c. 8 s. 175; 1879 c. 3; 1881 c. 60 s. 1; 1883 c. 47 s. 1; G.S. 1894 s. 761; R.L. 1905 s. 531; G.S. 1913 s. 886; G.S. 1923 s. 873; M.S. 1927 s. 873.

Where plaintiff had not recorded his oath in the register's office nor filed his oath with the clerk of the district court, he had not fully qualified for the office of register of deeds; and the old register holds over until his successor is qualified. The supreme court has no jurisdiction to issue an alternate writ of mandamus, the proper practice being to apply upon notice for a peremptory writ. *Harkins v Board of Supervisors*, 2 M 342 (294); *Harkins v Sencerbox*, 2 M 344 (297).

Recourse cannot be had against a surety on a public official's bond conditioned upon the faithful performance of his official duties, because of negligence of acts done outside the scope of his statutory duties. *Fed. Intermediate v Maryland Casualty*, 194 M 150, 259 NW 793.

**386.02 DELIVERY TO SUCCESSOR.**

**HISTORY.** 1849 c. 21 s. 3; R.S. 1851 c. 8 art. 2 s. 3; P.S. 1858 c. 7 s. 21; G.S. 1866 c. 8 s. 154; G.S. 1878 c. 8 s. 176; G.S. 1894 s. 762; R.L. 1905 s. 532; G.S. 1913 s. 887; G.S. 1923 s. 874; M.S. 1927 s. 874.

**386.03 RECEPTION BOOKS.**

**HISTORY.** 1849 c. 21 s. 4; 1851 c. 2; R.S. 1851 c. 8 art. 2 s. 4; 1858 c. 52 s. 5; P.S. 1858 c. 7 s. 22; P.S. 1858 c. 35 s. 58; G.S. 1866 c. 8 s. 155; G.S. 1878 c. 8 s. 177; G.S. 1894 s. 763; R.L. 1905 s. 533; 1907 c. 442 s. 1; G.S. 1913 s. 888; G.S. 1923 s. 875; M.S. 1927 s. 875.

In the reception books required to be kept by the register of deeds the column headed "where situated" was designed to contain a description of the land so that any person making a search could ascertain from the reception books whether a grantor had made any conveyance. *Mapes v Board*, 11 M 367 (264).

At most the statutory provision goes no further than to make the certificate conclusive as to the time of the receipt and record of an instrument recorded. *Thorpe v Merrill*, 21 M 336.

Where a deed of conveyance has been incorrectly recorded and the original deed has been lost it is competent to prove, by parol or other competent evidence, the contents of the lost instrument and that it was incorrectly recorded. *Gastron v Merriam*, 33 M 271, 22 NW 614.

It is the duty of register of deeds to endorse upon each instrument recorded by him the time when received and the book and page in which recorded. This endorsement is evidence of the fact of record. *Hill v Gill*, 40 M 441, 42 NW 294.

Purchasers are not charged with constructive notice of entries in the index or reception book in the register's office not required by law to be made. The recorded certificate of satisfaction of a mortgage, not showing by whom the payment was made, the purchaser may assume that it was made by the person upon whom it was the primary duty to make it; and he is not put on inquiry that some other person made the payment who would be entitled to subrogation. *Aherne v Freeman*, 46 M 156, 48 NW 677.

Entries made in reception books as to the time an instrument was received and recorded are competent evidence in connection with the record itself as to such time. *Whitacre v Martin*, 51 M 421, 53 NW 806.

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The statute prescribing a form for each page of the reception book does not require a column to be headed "description of property." Immaterial that in a column so headed nothing but the words "see record" appear; and as entries made in reception books as to the time an instrument was received for record are competent evidence, it is immaterial that when making the entry required by the last paragraph of General Statutes 1878, Chapter 8, Section 177, the register of deeds failed to state the year in which the record was made. *Whitacre v Martin*, 51 M 421, 53 NW 806.

A deed, as recorded in full, described land as in Section 32, Township 39, Range 19, Pine County, Minnesota. There was no such section and township in Range 19 in Minnesota. The grantor owned land in Section 32, Township 39, Range 22, Pine County, Minnesota, and the reception book of the register of deeds contained this description. It is clear that the mistake was in the record in extenso and not in the drafting of the deed, and secondary evidence is admissible to clear the record. *Latourell v Hobart*, 135 M 109, 160 NW 259.

It is the duty of the register of deeds to register instruments even though they lack federal documentary stamps. OAG Feb. 14, 1939 (532a-5).

### 386.04 NUMERICAL REGISTER AND RECEPTION BOOK.

HISTORY. 1909 c. 226 s. 1; G.S. 1913 s. 889; G.S. 1923 s. 876; M.S. 1927 s. 876.

A mortgagee of the vendee in a contract for deed is included in the word "assigns" as used in General Statutes 1913, Section 8081; and the recording of such mortgage is constructive notice to the vendor, and requires the vendor to serve notice of cancelation upon such mortgagee in order to terminate his rights in the interest of the vendee under the contract. *Stannard v Marboe*, 159 M 119, 198 NW 127.

### 386.05 TRACT INDEX BOOKS.

HISTORY. 1870 c. 52; 1871 c. 93; 1873 c. 42 s. 1; G.S. 1878 c. 8 s. 178; G.S. 1894 s. 764; 1905 c. 51; R.L. 1905 s. 534; 1907 c. 442 s. 1; G.S. 1913 s. 890; G.S. 1923 s. 877; M.S. 1927 s. 877.

The register of deeds paid strictly on a fee basis does not lose his right to fees for making abstracts because the county buys or has a tract index made. OAG June 23, 1937 (373b-10a).

The county board is not required to install a track index. OAG Dec. 7, 1938 (373b-23).

### 386.06 TRACT INDEX BOOKS; CONTRACTS FOR MAKING.

HISTORY. 1927 c. 19; M.S. 1927 s. 877-1.

The bond is required to insure the faithful completion of the tract index by the register. OAG June 23, 1937 (373b-10a).

### 386.07 FOR LANDS REGISTERED UNDER TORRENS SYSTEM IN HENNEPIN COUNTY.

HISTORY. 1927 c. 376 s. 1; M.S. 1927 s. 877-2.

### 386.08 BY WHOM PREPARED.

HISTORY. 1927 c. 376 s. 2; M.S. 1927 s. 877-3.

### 386.09 PAYMENT FOR FROM REVENUE FUND.

HISTORY. 1927 c. 376 s. 3; M.S. 1927 s. 877-4.

### 386.10 BONDS FOR TRACT INDEX, HENNEPIN COUNTY.

HISTORY. 1929 c. 227 s. 1; M. Supp. s. 877-5.

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## **386.11 BONDS, INTEREST, MATURITY; PROCEEDS, WHERE PLACED.**

HISTORY. 1929 c. 227 ss. 2, 3; M. Supp. ss. 877-6, 877-7.

## **386.12 TAX LEVY.**

HISTORY. 1929 c. 227 s. 4; M. Supp. s. 877-8.

## **386.13 TRANSCRIBING RECORDS OF STATE LANDS.**

HISTORY. 1913 c. 427 s. 1; G.S. 1913 s. 891; G.S. 1923 s. 878; M.S. 1927 s. 878.

## **386.14 RECORDS AS PRIMA FACIE EVIDENCE.**

HISTORY. 1913 c. 427 s. 2; G.S. 1913 s. 892; G.S. 1923 s. 879; M.S. 1927 s. 879.

## **386.15 TRANSCRIBING TRACT INDEXES IN CERTAIN COUNTIES.**

HISTORY. 1905 c. 51 s. 1; 1911 c. 337 s. 1; G.S. 1913 s. 893; G.S. 1923 s. 880; M.S. 1927 s. 880.

"Necessity" in this section covers cases when the tract indexes are badly worn or nearly unreadable. OAG Feb. 24, 1944 (373b-23).

## **386.16 REGISTER TO SUPERVISE; COMPENSATION.**

HISTORY. 1905 c. 51 s. 2; 1911 c. 337 s. 2; G.S. 1913 s. 894; G.S. 1923 s. 881; M.S. 1927 s. 881.

## **386.17 TO EXHIBIT RECORDS.**

HISTORY. 1849 c. 21 s. 4; R.S. 1851 c. 8 art. 2 s. 4; 1857 c. 2; P.S. 1858 c. 7 s. 22; G.S. 1866 c. 8 s. 156; 1876 c. 72 s. 1; G.S. 1878 c. 8 s. 179; 1885 c. 116; G.S. 1894 s. 765; R.L. 1905 s. 535; G.S. 1913 s. 895; G.S. 1923 s. 882; M.S. 1927 s. 882.

Those in the business of making and furnishing abstracts of title to others for compensation are entitled to have access to inspect the public records and papers in the office of the register of deeds for the purpose of making and completing their "tract indexes", subject to such reasonable rules as the register may prescribe to secure the safety of the public records entrusted to his official custody. *State v Rhaher*, 37 M 372, 35 NW 7.

## **386.18 ABSTRACTER; BOND.**

HISTORY. 1849 c. 21 s. 4; R.S. 1851 c. 8 art. 2 s. 4; 1857 c. 2; P.S. 1858 c. 7 s. 22; G.S. 1866 c. 8 s. 156; 1876 c. 72 s. 1; G.S. 1878 c. 8 s. 179; 1885 c. 116; G.S. 1894 s. 765; R.L. 1905 s. 536; G.S. 1913 s. 896; G.S. 1923 s. 883; M.S. 1927 s. 883.

## **386.19 RECORD BOOKS, INDEXES.**

HISTORY. 1849 c. 21 s. 5; R.S. 1851 c. 8 art. 2 s. 5; 1854 c. 21 s. 5; P.S. 1858 c. 7 s. 23; G.S. 1866 c. 8 s. 157; 1876 c. 72 s. 1; G.S. 1878 c. 8 s. 180; G.S. 1894 s. 766; R.L. 1905 s. 537; G.S. 1913 s. 897; G.S. 1923 s. 884; M.S. 1927 s. 884.

Where an assignment was endorsed on a mortgage describing it as the "within-described mortgage" and was recorded on a subsequent page of the same book as the mortgage, it was held sufficient recording of the assignment for the assignee to foreclose under the power. *Carli v Taylor*, 15 M 191 (131).

Laws 1854, Chapter 21, Section 4, required the register of deeds to keep three separate and distinct sets of record books; one for deeds, one for mortgages, and one for all other instruments; also to keep a corresponding set of alphabetical indexed books. An index book for "all other instruments" correctly kept is not invalid because it is bound in a volume containing one of the record books to which it relates. *Benton v Nicoll*, 24 M 221.

A grantee in a deed of conveyance taken as security for a loan, who at the same time gives to his grantor a bond of defeasance for a reconveyance upon payment

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of the loan, acquires only the interest of a mortgagee in the premises. *Benton v Nicoll*, 24 M 221.

When a prior mortgage has been satisfied of record the certificate need not show by whom the payment was made; and purchasers are not charged with constructive notice of entries in the index or reception book in the register's office not required by law to be made. No right of subrogation exists in the instant case. *Aherne v Freeman*, 46 M 156, 48 NW 677.

In an equity suit by the United States to cancel a patent to lands, the rule as to what constitutes a bona fide purchaser is no different from what it would be if the complainant were an individual. *United States v Chgo. Milwaukee & St. P. Ry.* 172 F. 271.

Pendency of an action relating to real estate is notice to purchasers or encumbrancers only from the time of the filing of notice thereof in the office of the register of deeds in the county in which the land is situated. *United States v Chgo. Milwaukee Ry. Co.* 172 F. 271.

New times have brought new methods and the legislature had no intention of narrowly restricting the register of deeds to the use of a proper volume bound before usage. Loose-leaf systems may be purchased if "suitable" within the meaning of section 386.19. 1934 OAG 640, July 14, 1933 (851o).

Where the register of deeds in the performance of his duties furnishes "satisfactions of chattel mortgages", "statements", and similar, the county is chargeable for his fees. OAG April 11, 1938 (373b-21).

Where a mortgagee has six mortgages against one mortgagor and on payment of the last included in one satisfaction a satisfaction of all the mortgages describing each in detail, the register of deeds is entitled to charge a separate fee for each satisfaction. 1940 OAG 201, March 19, 1940 (373b-16).

Loose-leaf binders purchased and furnished by the state, of good quality and with a locking device, may be used by local registrars of births and deaths in which to keep their records. 1940 OAG 221, May 15, 1940 (225-1).

## 386.20 CERTIFICATES OF DISCHARGE FROM U. S. SERVICE FILED WITH REGISTER OF DEEDS.

HISTORY. 1919 c. 266 s. 1; G.S. 1923 s. 885; M.S. 1927 s. 885; 1945 c. 542 s. 1.

An instrument releasing a veteran from active duty, and giving him an inactive status, and veterans' discharge papers, may be filed with the register of deeds. The recording fee must be paid by the veteran. OAG Dec. 11, 1944, March 16, 1945 (310).

## 386.21 RECORD PRIMA FACIE EVIDENCE.

HISTORY. 1919 c. 266 s. 2; G.S. 1923 s. 886; M.S. 1927 s. 886.

## 386.22 THE REGISTER OF DEEDS TO PROCURE RECORD BOOKS.

HISTORY. 1919 c. 266 s. 3; G.S. 1923 s. 887; M.S. 1927 s. 887.

## 386.23 TRANSCRIBING SHERIFF'S CERTIFICATES FILED PRIOR TO MAY 10, 1862.

HISTORY. 1905 c. 329 s. 1; G.S. 1913 s. 898; G.S. 1923 s. 888; M.S. 1927 s. 888.

## 386.24 COMPENSATION.

HISTORY. 1905 c. 329 s. 2; G.S. 1913 s. 899; G.S. 1923 s. 889; M.S. 1927 s. 889.

## 386.25 RECORDS AS PRIMA FACIE EVIDENCE.

HISTORY. 1905 c. 329 s. 3; G.S. 1913 s. 900; G.S. 1923 s. 890; M.S. 1927 s. 890.

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## **386.26 TRANSCRIBING CERTAIN INSTRUMENTS IN CERTAIN COUNTIES.**

HISTORY. 1909 c. 153 s. 1; G.S. 1913 s. 901; G.S. 1923 s. 891; M.S. 1927 s. 891.

## **386.27 EFFECT OF TRANSCRIPTION.**

HISTORY. 1909 c. 153 s. 2; G.S. 1913 s. 902; G.S. 1923 s. 892; M.S. 1927 s. 892.

## **386.28 DUTY OF REGISTER OF DEEDS.**

HISTORY. 1909 c. 153 s. 3; G.S. 1913 s. 903; G.S. 1923 s. 893; M.S. 1927 s. 893.

## **386.29 TRANSCRIBING ABSTRACT RECORDS.**

HISTORY. 1927 c. 104; M.S. 1927 s. 893-1.

## **386.30 REGISTER OF DEEDS TO RECORD DEEDS WITHIN 30 DAYS.**

HISTORY. 1919 c. 207 s. 1; G.S. 1923 s. 894; M.S. 1927 s. 894.

## **386.31 CONSECUTIVE NUMBERING.**

HISTORY. 1887 c. 199 ss. 1, 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 ss. 180a, 180c; G.S. 1894 ss. 767, 769; R.L. 1905 s. 538; G.S. 1913 s. 904; G.S. 1923 s. 895; M.S. 1927 s. 895.

Where several mortgages executed on the same day, on the same land, are recorded at the same hour, and each received document numbers in the register's office, it must be presumed, in the absence of any showing to the contrary, that they take priority in the order in which they are numbered. *Connecticut Mut. v King*, 12 M 287, 75 NW 376; *Wolf v Edmonston*, 99 M 241, 109 NW 233; *Edmonston v Wilbur*, 99 M 495, 110 NW 3; *Dear v Remington*, 176 M 559, 223 NW 925.

The presumption that the first numbered mortgage is senior to the others is prima facie only and, under the facts stated in the instant case, the statutory presumption of priority of lien in favor of the mortgage numbered first was overcome by evidence showing a contrary intention of the parties. *Fender v Appel*, 187 M 281, 245 NW 148.

Effect of intention as to priority. 17 MLR 554.

## **386.32 CONSECUTIVE INDEX.**

HISTORY. 1887 c. 199 s. 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 s. 180b; G.S. 1894 s. 768; R.L. 1905 s. 539; G.S. 1913 s. 905; G.S. 1923 s. 896; M.S. 1927 s. 896.

## **386.33 DEPUTIES.**

HISTORY. 1849 c. 21 s. 6; R.S. 1851 c. 8 art. 2 s. 6; P.S. 1858 c. 7 s. 24; G.S. 1866 c. 8 s. 158; G.S. 1878 c. 8 s. 181; 1889 c. 88 s. 1; G.S. 1894 s. 771; R.L. 1905 s. 540; G.S. 1913 s. 906; G.S. 1923 s. 897; M.S. 1927 s. 897.

The bond of the register of deeds does not cover the deputy who temporarily succeeds him. 1942 OAG 203, June 22, 1942 (373A-2).

## **386.34 SALARY OF DEPUTIES IN CERTAIN COUNTIES.**

HISTORY. 1911 c. 382 s. 1; G.S. 1913 s. 907; 1917 c. 83; 1927 c. 207; M.S. 1927 s. 897-1; 1931 c. 139 s. 1.

## **386.35 RECORD OF CATTLE BRANDS.**

HISTORY. R.S. 1851 c. 27 s. 1; P.S. 1858 c. 22 s. 1; G.S. 1866 c. 8 s. 159; G.S. 1878 c. 8 s. 182; G.S. 1894 s. 772; R.L. 1905 s. 541; G.S. 1913 s. 910; G.S. 1923 s. 898; M.S. 1927 s. 898.

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## 386.36 RECORD OF FARM NAMES.

HISTORY. 1909 c. 154 s. 1; G.S. 1913 s. 911; G.S. 1923 s. 899; M.S. 1927 s. 899.

## 386.37 ABSTRACTS OF TITLE.

HISTORY. 1856 c. 11 s. 1; P.S. 1858 c. 7 s. 29; G.S. 1866 c. 8 s. 160; G.S. 1878 c. 8 s. 183; 1889 c. 99 s. 1; G.S. 1894 s. 773; R.L. 1905 s. 542; G.S. 1913 s. 912; G.S. 1923 s. 900; 1927 s. 253; M.S. 1927 s. 900.

Recourse cannot be had against a surety on a bond of a public officer conditioned for the faithful performance of his official duty because of negligence in acts done not within the scope of his statutory duties. *Fed. Intermediate v Maryland*, 194 M 153, 254 NW 793.

The register of deeds is required to make a complete abstract from the beginning of the county to the present time and his fees for furnishing and certifying such abstract are fixed and limited by statute. 1936 OAG 120, Oct. 4, 1935 (373b-1).

Where the register of deeds does abstracting in her capacity as such register of deeds, the county is legally responsible for furnishing abstract supplies including covers, title pages, fasteners, and similar. 1936 OAG 131, Oct. 31, 1935 (373b-21); 1938 OAG 144, July 15, 1938 (125a-52).

It is the duty of the register of deeds to make out under a certificate a full abstract of title as same appears of record, and if liens appear of record as being liens upon the land, such liens should be included in the abstract. 1938 OAG 145, Aug. 25, 1937 (373b-1).

The abstract need not be complete if the person purchasing it only orders a certain part. The certificate should specifically show what part of the abstract is not furnished. OAG Dec. 15, 1944 (373b-1).

## 386.39 INSTRUMENTS NOT PROPERLY EXECUTED.

HISTORY. 1856 c. 11 s. 2; P.S. 1858 c. 7 s. 30; G.S. 1866 c. 8 s. 161; G.S. 1878 c. 8 s. 184; G.S. 1894 s. 774; R.L. 1905 s. 543; G.S. 1913 s. 913; G.S. 1923 s. 902; M.S. 1927 s. 902.

Where an instrument which the law requires to be sealed is in all respects correctly recorded except that the record does not show a copy of the seal or any device representing it, the record will be valid and sufficient as notice, providing the record represents on its face or in any other way that the instrument was sealed. *Beardsley v Day*, 52 M 451, 55 NW 46.

Register of deeds need not record a contract for a deed which is not properly witnessed nor acknowledged, though attached to a notice of cancellation of contract and supplementary documents. 1934 OAG 252, July 17, 1933 (373b-9).

Where a deed referred to an unrecorded private plat, the register of deeds is not warranted in refusing to record it. OAG Sept. 11, 1939 (373b-15).

## 386.40 SEAL.

HISTORY. 1856 c. 44 s. 2; P.S. 1858 c. 7 s. 32; G.S. 1866 c. 8 s. 163; 1870 c. 53 s. 2; G.S. 1878 c. 8 ss. 186, 188; G.S. 1894 ss. 776, 778; R.L. 1905 s. 544; G.S. 1913 s. 914; G.S. 1923 s. 903; M.S. 1927 s. 903.

In order to perfect his lien, the material-man must file a duly verified account thereof within the statutory time; and where such account purported to be sworn to before the register of deeds, but was not attested by his seal so as to entitle it to be recorded within the time limited, it was insufficient to preserve and continue the lien. *Colman v Goodnow*, 36 M 9, 29 NW 388.

## 386.41 CERTIFICATE OF RECORD.

HISTORY. 1870 c. 53 s. 1; G.S. 1878 c. 8 s. 187; G.S. 1894 s. 777; R.L. 1905 s. 545; G.S. 1913 s. 915; G.S. 1923 s. 904; M.S. 1927 s. 904.

The vendee of real estate was required to erect a dwelling house upon the premises within a specified time before being entitled to receive a deed. This con-

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tract authorized the vendee to enter into contracts with material-men, who were entitled to liens against the premises upon the interest of both vendor and vendee. *Hill v Gill*, 40 M 441, 42 NW 294.

An officer's certificate is evidence, without proof that he held the office; and the register's certificate of record is good without his official seal. The register of deeds should keep his office at the county-seat, but his failure to do so does not render void the records in his office. *Thomas v Hanson*, 59 M 274, 61 NW 135.

## **386.42 ABSTRACT OF MORTGAGES AND LIENS ON GRAIN CROPS FOR ELEVATOR COMPANIES; APPLICATION FOR; FEES.**

HISTORY. 1925 c. 356 s. 1; M.S. 1927 s. 904-1.

## **386.43 CONTENTS; SUPPLEMENTAL ABSTRACTS.**

HISTORY. 1925 c. 356 s. 2; M.S. 1927 s. 904-2.

County officers are entitled to compensation for days of service rendered in January up to the time their successors qualify. OAG Dec. 1, 1934 (104a-9).

The words "and also together with sufficient feed and roughage to care for all live stock described above during the life of this mortgage" need not be included in the abstract of a chattel mortgage where there is no description of place where such personal property is located. OAG June 30, 1939 (373b-5).

## **386.44 OATHS AND PAPERS, WHERE FILED.**

HISTORY. 1860 c. 15 s. 31; G.S. 1866 c. 8 s. 109; G.S. 1878 c. 8 s. 123; G.S. 1894 s. 695; R.L. 1905 s. 446; G.S. 1913 s. 771; G.S. 1923 s. 777; M.S. 1927 s. 777.

## **386.45 RECORDING DECREES IN BANKRUPTCY PROCEEDINGS.**

HISTORY. 1939 c. 117; M. Supp. s. 887-1.