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By: OAH on 2/22/2022 2:48 PM

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TELECOPY TRANSMITTAL SHEET
OUR FAX NO.: (320) 222-5556

TO: Judge Jessica Palmer-Denig

COMPANY: Office of Admin. Hearings

FAX NUMBER: 651-539-0310

FROM: Mark Wermerskirchen

DATE: 2/22/22

SUBJECT: Comments regarding proposed
Amendments to the Rules for the
Minnesota Veterans Homes

NUMBER OF PAGES INCLUDING COVER:

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MESSAGES/REMARKS/SPECIAL INSTRUCTIONS:

Please deliver to Judge Palmer-Denig immediately. Thank you.

TIME SENT: 2:45 p.m.

OPERATOR: Diana

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VIA FACSIMILE
651-539-0310

February 22, 2022

JUDGE JESSICA PALMER-DENIG
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
ST PAUL MN 55164

Re: Comments Regarding Proposed Amendments to the Rules for the Minnesota Veterans Homes as Proposed by Minnesota Department of Veterans Affairs (MDVA)

Dear Judge Jessica Palmer-Denig:

To treat the effective transfer date for real property as the date the document conveying the real property is recorded, as is being proposed (PR 55.4-55.6) violates Minnesota law. Numerous court cases have established when a deed is effective, and Minnesota law is clear that it is upon delivery or recording.

While usually an Agency is entitled to deference, that deference is unwarranted when, as here, the Agency's proposed rule on property rights has resulted in the Agency misapplying the law governing conveyances of real property in Minnesota. In order to transfer title in Minnesota, a deed must be delivered. The date of delivery is ordinarily presumed to be the date of the deed. See Stone v. Jetmar Properties, LLC, 733 N.W.2d 480 (Minn. App. 2007). The essential elements of delivery are surrender of control by the grantor and intent to convey title. Slawik v. Loseth 207 Minn. 137, 139, 270 N.W. 228, 229 (1940). Physical delivery is not necessary. The grantor must merely show a present, unconditional intention to part with ownership. Mollico v. Mollico, 628 N.W.2d 637, 641-42 (Minn. App. 2001).

Here, the Agency is changing the rules to say the effective date/transfer date for real property will now only be the date the deed/document is recorded. Line 55.4-55.6. This change, basically a one size fits all, clearly violates Minnesota law. Why should the Agency be allowed to have a rule that clearly violates Minnesota law? The Agency should not have such an arbitrary and capricious rule.

In Re: Estate of Savich, 671 N.W.2d, 746 (Minn. App. 2003) a Minnesota court summarized the law on delivery of deeds as follows:

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“In order to transfer title, a deed must be delivered.” (The date of delivery is ordinarily presumed to be the date of the deed. Stone v. Jetmar Properties, LLC, 733 N.W.2d 480 (Minn. App. 2007). The essential elements of delivery are surrender of control by the grantor and intent to convey title. Physical delivery is not necessary; the grantor must merely show a present, unconditional intention to part with ownership. Mollico v. Mollico, 628 N.W.2d 637, 641-42 (Minn. App. 2001). See also In Re: Estate of Savich, 671 N.W.2d at 750. A deed signed **but not delivered** before death of the grantor is void. Likewise, a deed cannot be delivered to a deceased grantee. “Thus, ... a conveyance cannot be made to a deceased person.”

The proposed rule on property rights, while usually an Agency is entitled to deference, is unwarranted here, because it has resulted in the Agency misapplying the law governing conveyances of real property in Minnesota. In Re: Estate of Savich, 671 N.W.2d 750 (Minn. App. 2003).

The proposed rule change is contrary to all Minnesota law regarding the effective date of a deed. The proposed change will **result in an unneeded** and absurd new rule **that is not reasonable** and that will only apply to Vets and their spouses, and to the extent that it does, it penalizes only those who have served our country. This change is an example of how the Minnesota Vet Board failed to properly consult with stakeholders in order to devise the “best possible rules” for Minnesota Veterans and their spouses. Please reject the proposed rule pursuant to 1400.2100.

Very truly yours,

WERMERSKIRCHEN LAW OFFICE, P.A.



Mark Wermerskirchen

MW/djh

pc: William T. Moore, Docket Coordinator
via email at William.T.Moore@state.mn.us