

OFFICIAL OPINION NO. 87-40, Certificate of Value

November 19, 1987

Mr. Craig A. Kennedy  
Yankton County State's Attorney  
P.O. Box 58  
Yankton, South Dakota 57078-0058

OFFICIAL OPINION NO. 87-40

**CERTIFICATE OF VALUE**

Dear Mr. Kennedy:

You have requested an official opinion on the following factual situation:

**FACTS:**

The Department of Revenue sent a memorandum dated August 12, 1987, to the Yankton County Register of Deeds. The memorandum contradicts what appears to be the plain reading of SDCL 7-9-7(4) regarding the types of documents which must be accompanied by a certificate of value. (See attached copy of memorandum.)

Concerning these facts, you have asked the following questions:

**QUESTIONS:**

1. What documents must be accompanied by a certificate of value under SDCL 7-9-7(4)?
2. Whether, pursuant to SDCL 10-1-17, the Department of Revenue may require the Register of Deeds to obtain more information than that specifically addressed in SDCL 7-9-7(4)? (See attached copy of certificate of value form.)

The statute in question, SDCL 7-9-7(4), was adopted as Chapter 69, Laws of 1987, "An Act to require certain information to be included in any instrument transferring an interest in real property." The particular requirement is that, "any deed, contract for deed or other instrument dated after July 1, 1987, used in the purchase, exchange or assignment of interest in real property \_which is not accompanied by a certificate of value including the

total purchase price and any other consideration exchanged for the property, the relationship of the seller and buyer, if any, and the terms of payment if other than payment in full at the time of sale ..." may not be accepted for recordation by the register of deeds. While this may seem to be a broad statement as to the type of instrument nevertheless the recording of instruments is well covered in SDCL 43-28. Specifically, SDCL 43-28-1, any instrument affecting the title to or possession of real property may be recorded as by law provided. By the terms of the statute this includes any instrument used in the purchase, exchange, or assignment of interest in real property.

IN RE QUESTION NO. 1:

Any instrument which accomplishes the purchase, exchange or assignment of any interest in real property must have a certificate of value.

IN RE QUESTION NO. 2:

The fact that the purpose of a certificate of value is to make information available to the assessor does not change the terms of the statute. This is a matter which only the Legislature can address.

You have asked if the Secretary may require more information than is specifically addressed in the statute. The form provided by the Secretary of Revenue was an attempt to simplify the matter and to have all the information needed in one place. Obviously, however, to be able to identify the property the description and the names of the grantors and grantees would have to be recorded in some form or manner. This could either be done by filing a copy of the deed with the certificate of value if, in fact, a person would wish to do that. However, the attempt on the form to place boxes where a party could merely check as to the type of transaction was deemed to be helpful and was not an attempt to change the terms of the statute. The Secretary of Revenue is empowered by SDCL 10-1-15 to supervise the assessment or property taxes and may direct the use of certain forms. Since this would be an interpretive rule, it would be necessary to comply with SDCL 1-26 if the Secretary wishes to make the use of a specific form mandatory.

Respectfully submitted,

Roger A. Tellinghuisen  
Attorney General