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DEPARTMENT OF JUSTICE

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Mr. Grant P. Thomas
Corporation Counsel
Door County
421 Nebraska Street
Sturgeon Bay, WI 54235

Dear Mr. Thomas:

¶ 1. You have asked for advice concerning the duty of a register of deeds to accept self-created "land patents" and "updates of land patents." For a number of years, some individuals have attempted to record or file a "land patent," "update of land patent," or other similarly-titled instrument with registers of deeds, often in an apparent attempt to defeat a foreclosure action or eliminate a mortgage debt. I conclude that a register of deeds has no duty to record such documents.

¶ 2. Wisconsin Stat. § 59.43(1) specifies the duties of the register of deeds. Regarding recording, it provides:

> The register of deeds shall:
>
> (a) Record or cause to be recorded in suitable books to be kept in his or her office, correctly and legibly all deeds, mortgages, instruments and writings authorized by law to be recorded in his or her office and left with him or her for that purpose . . . .

The statute requires the recording only of documents that are "authorized by law to be recorded."

¶ 3. The recording statute, Wis. Stat. § 706.05(1), governs which documents relating to real property are authorized by law to be recorded. It provides that "every conveyance, and every other instrument which affects title to land in this state, shall be entitled to record in the office of the register of deeds[.]" "Conveyance" is a written instrument evidencing a transaction governed by Wis. Stat. ch. 706, which governs transactions by which an interest in land is created, aliened, mortgaged, assigned, or otherwise affected. Wis. Stat. §§ 706.01(4), 706.001(1). Thus, whether the document would be classified as a conveyance or other

instrument, the question is whether self-created land patents and similarly-titled documents "affect an interest in land."[1]

¶ 4. They do not. A land patent is the instrument by which the government conveys title to portions of the public domain to private individuals. *United States v. Shumway*, 199 F.3d 1093, 1096 (9th Cir. 1999); BLACK'S LAW DICTIONARY 1234 (9th ed. 2009). A land patent conveys fee simple ownership from the government to the patentee in previously public land. *In re Johnson*, 61 B.R. 858, 863 (Bankr. D. S.D. 1986); *Murphy v. Burch*, 205 P.3d 289, 292 (Cal. 2009). Once a land patent has been issued and title conveyed, there is no provision, or need for, any "update" to the patent. *United States v. Manke*, 2012 WL 1898757 (W.D. Mo. 2012), at *6.

¶ 5. "Land patents," "updates of land patent" and other, similarly-titled documents filed by private individuals are not true land patents. They are not grants of public land from the government to private individuals. They purport to be grants of private land from private individuals to themselves or other private individuals. Numerous courts have concluded that a "land patent" self-created by an individual is a legal nullity. The court in *Hilgeford v. Peoples Bank*, 607 F. Supp. 536, 538 (N.D. Ind. 1985) (emphasis in original), described this invalidity:

> [T]he "land patent" attached to plaintiffs' various filings is a grant of a land patent from the plaintiffs to the plaintiffs. It is, quite simply, an attempt to improve title by saying it is better. The court cannot conceive of a potentially more disruptive force in the world of property law than the ability of a person to get "superior" title to land by simply filling out a document granting himself a "land patent" and then filing it with the recorder of deeds. Such self-serving, gratuitous activity *does not, cannot* and *will not* be sufficient by itself to create good title.

Citing *Hilgeford*, the Seventh Circuit has also concluded that such filings are legally invalid. *State of Wisconsin v Glick*, 782 F.2d 670, 672 (7th Cir. 1986); *see also Manke*, 2012 WL 1898757 at *6; *Hamilton v. Noble Energy, Inc.*, 220 P.3d 1010, 1013-14 (Colo. App. 2009) (a self-created "land patent" fails to acquire or otherwise transfer any interest in the property); *Britt v. Fed. Land Bank Ass'n of St. Louis*, 505 N.E.2d 387, 391 (Ill. App. 1987) (collecting cases and finding individual's claim frivolous); *Fed. Land Bank of Jackson v. Kennedy*, 662 F. Supp. 787, 792 (N.D. Miss. 1987) (individual's self-created "declaration of land patent" void); *Nixon v. Phillipoff*, 615 F. Supp. 890, 894 (N.D. Ind. 1985) ("This court has considered Nixon's land patent and found it to be a frivolous legal nullity that did not and could not affect the title to the mortgaged land at issue . . . .").

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[1]In using the term "self-created land patent," this opinion refers to a document not executed by an authorized government representative and which does not relate to a transfer of an interest by a governmental agency.

¶ 6. A legally invalid document affects no interest in land. Only instruments that affect an interest in land are entitled to be recorded under Wis. Stat. § 706.05(1). Since self-created land patents affect no interest in land, they are not entitled to recording under Wis. Stat. § 706.05(1).

¶ 7. Without authorization to be recorded, self-created land patents are not among the documents that the register of deeds is required to record under Wis. Stat. § 59.43(1). Where the face of an instrument indicates that it is not among the documents authorized by law to be filed, a register of deeds has no obligation to record it. *Appliance Buyers Credit Corp. v. Crivello*, 43 Wis. 2d 241, 251, 168 N.W.2d 892 (1969) (holding that the Milwaukee register of deeds had no obligation to record a document purporting to affect only property that was not entitled by law to be recorded). A prior Attorney General opinion has also concluded that, where the face of an instrument evidences its invalidity, a register of deeds has no obligation to record the document and should refuse to do so. 69 Op. Att'y Gen. 58, 63 (1980).

¶ 8. I conclude that, because self-created land patents and updates to land patents are invalid on their face, they are not instruments entitled to recording under Wis. Stat. § 706.05(1). Because they are not authorized by law to be recorded, they are not among the instruments or writings that a register of deeds must record under Wis. Stat. § 59.43(1). A register of deeds has no duty to record these documents.

Sincerely,

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Attorney General

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