

Opinion No. 50
Livestock—Brands, Recording
Transfer of Title Thereof Upon
Death of Owner

Held: The Secretary of the Livestock Commission, who is the general recorder of marks and brands, should require proof of adjudication of transfer of the ownership of a brand by a court order or decree when requested to show a change of ownership on his records upon the death of the record titleholder.

December 20, 1951.

Mr. Ralph Miracle, Secretary
Montana Livestock Commission
Helena, Montana

Dear Mr. Miracle:

You have asked me whether you, as general recorder of marks and brands, should require proof of adjudication of transfer of the ownership of a brand by court order or decree of distribution when requested to show a change of ownership on your records upon the death of the record titleholder, or whether some procedure other than probate may be recognized.

Section 46-604, Revised Codes of Montana, 1947, provides that any person, firm or corporation who desires to use a brand for livestock must make application to the Secretary of the Livestock Commission, who is also the general recorder of marks and brands. The recorder thereupon designates for the applicant's use some practical mark or brand distinguishable with reasonable certainty from all other marks and brands recorded, or re-recorded, within the period of ten years immediately preceding the time of filing the application. The recorder is required to keep a record of these brands, as in the act provided, and he shall designate the position on the animal upon which the mark or brand shall be placed, and the species of animals on which the brand or mark may be used.

Every tenth year after 1921 is designated as the year for the re-recording of all artificial marks and brands used to distinguish and identify the ownership of domestic animals and livestock, Section 46-605, Revised Codes of Montana, 1947. In the re-recording year the general recorder must give notice that the brands are to be re-recorded, Section 46-607, Revised Codes of Montana, 1947.

Brands are required to be obtained from the general recorder and must be recorded with him, Section 46-603, Revised Codes of Montana, 1947. The person, firm or corporation in whose name any mark or brand is of record is entitled to the exclusive use of such mark or brand on the species of animal and in the position designated in such record, Section 46-606, Revised Codes of Montana, 1947. Prima facie one is the owner of livestock bearing his recorded brand. *Klind v. Valley County Bank of Hinsdale*, 69 Mont. 386, 391; 222 Pac. 439, and Section 46-606, supra. The law contemplates that the title to the brand may be transferred, Section 46-606, supra.

These code sections and law show that once a party has obtained an artificial mark or brand from the general recorder he becomes the owner thereof and remains the owner as long as he re-records the brand each re-recording year. The recorded owner has the right to exclusive use of this recorded brand which is prima facie proof of ownership of livestock bearing it. These elements plus the right to transfer title give brands the attributes of property, and it has been held that a livestock brand is property, Opinion 219, Volume 16, Opinions of the Attorney General.

The transfer of title to property owned by a party at the time of his death can only be adjudicated by an order or decree of a court of competent jurisdiction. See Opinion 219, Volume 16, supra.

Transferring a decedent's title to a brand in the books of the recorder without proof of a court order or decree would make it possible for the records to disclose as titleholder someone other than the rightful owner of the brand.

Sometimes a recorder of titles is authorized by special statutory procedure to transfer a decedent's title on his records without court action. For example, in Section 53-109, Revised Codes of Montana, 1947, it is provided that in certain instances the registrar of motor vehicles may transfer a certificate of ownership and certificate of

registration of a motor vehicle to the surviving husband or wife or other heirs without a court order or decree. However, in the law on artificial marks and brands there is no special statutory procedure for transferring title.

Therefore, it is my opinion that you should require proof of adjudication of transfer of the ownership of a brand by a court order or decree when requested to show a change of ownership on your records upon the death of the record titleholder.

Very truly yours,
ARNOLD H. OLSEN
Attorney General