



KNOX COUNTY REGISTER OF DEEDS

SHERRY WITT, REGISTER

June 6, 2007

Dear Register's Office User,

I need to make you aware of two very important pieces of legislation which affect recordings in the Register of Deeds office. The first concerns the transfer of property to and from a revocable living trust. The State Legislature has enacted a statute which will take effect July 1, 2007, and which deems transfers to and from a revocable living trust as **taxable**. The new statute amends T.C.A., Section 67-4-409(a)(3).

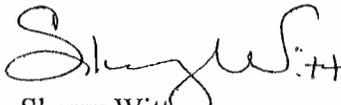
The only exception to this would be when an individual or a husband and wife were to transfer property to or from **their own revocable living trust**. Those transactions would be exempt, but all other transfers to or from a revocable living trust will be subject to recording taxes effective July 1, 2007.

The other change is going to have a major effect on the process for re-recording a corrected document. In the past, when mistakes were realized on a document after recording, the mistakes were corrected and the original document was simply submitted as a "re-recording," usually with some reference to what was being corrected.

Effective May 8, 2007, this process is no longer acceptable under the law. In order for a corrected document to be re-recorded, it must be re-executed (signed and notarized). The only alternative to re-executing an original document is to record a scrivener's error affidavit, which would identify the previously recorded document and describe any corrections to be made. The law also provides that a copy of the corrected document may be attached to the scrivener's error affidavit as an exhibit. It is important to keep in mind, however, that the copy of the document would only carry the legal weight of an exhibit to an affidavit, and not that of a recorded document.

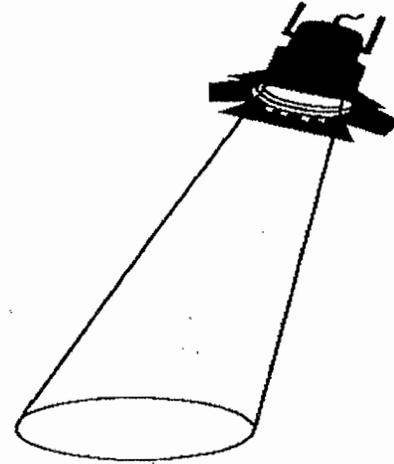
If you have any questions relative to these changes, please do not hesitate to call the office at 865-215-2330.

Very truly yours,


Sherry Witt



The University of Tennessee
County Technical Assistance Service



SPOTLIGHT on CURRENT ISSUES

Executive Director's Memo
May 21, 2007

LEGISLATIVE UPDATE FOR REGISTERS OF DEEDS

PUBLIC CHAPTER 116 (SCRIVENER'S ERROR AFFIDAVIT)

Under T.C.A. § 66-22-101, documents must be authenticated as a condition of recording. According to the statute, in order for a document to be authenticated, it must be executed by the maker, or the natural person acting on behalf of the maker, and then that signature must either be notarized or witnessed.

Issues have arisen when parties have recorded documents, realized mistakes were made in the documents, and then have corrected the mistakes and presented the corrected documents to registers for re-recording. Under T.C.A. § 66-22-101, such documents would not be eligible for recording as they would not be properly authenticated.

As this so-called "re-recording" is not a viable option for correcting mistakes made in recorded documents, parties have two options—they can either correct the document and have the corrected version executed by the maker and then notarized or witnessed or they can register a scrivener's error affidavit pursuant to T.C.A. § 66-24-101(a)(27).

A scrivener's error affidavit is used to identify the previously recorded document and describe the corrections that need to be made to the document. Public Chapter 116, which amends T.C.A. § 66-22-101 and § 66-24-101, goes further in that it provides that parties may attach corrected documents as exhibits to the affidavits. The purpose of the affidavit remains the same. The only change is that exhibits may now be included. Importantly, the bill provides that the previously recorded document, with corrections, may be attached as an exhibit. Keep in mind, however, this document will carry the legal weight of an exhibit to an affidavit, and not that of a recorded document such as a deed.

Public Chapter 116 was signed by the Governor May 8, 2007 and was effective on that day. Therefore, registers may now accept exhibits attached to scrivener's error affidavits.

A copy of Public Chapter 116 is attached.

PUBLIC CHAPTER NO. 180

SENATE BILL NO. 1373

By Haynes, Marrero

Substituted for: House Bill No. 467

By Fitzhugh

AN ACT to amend Tennessee Code Annotated, Title 67, relative to recording taxes on transfers to and from a revocable trust.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-409(a)(3), is amended by deleting the word "or" from the end of subdivision (E), by deleting the current language of subdivision (F) in its entirety and by inserting the following as new subdivisions (F) and (G) thereto:

(F) Are transfers by a transferor of real estate to a revocable living trust created by the same transferor or by a spouse of the transferor, or transfers by the trustee of a revocable living trust back to the same transferor or to the transferor's spouse; or

(G) Are deeds executed by the trustee of a revocable living trust to implement a testamentary devise by the trustor of the trust.

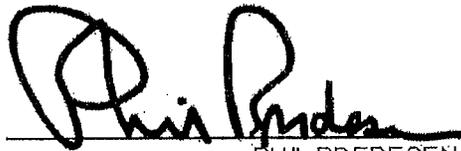
SECTION 2. This act shall take effect July 1, 2007, the public welfare requiring it.

PASSED: May 3, 2007


RON RAMSEY, SPEAKER
SENATE OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 16th day of May 2007


PHIL BREDEESEN, GOVERNOR

PUBLIC CHAPTER NO. 116

HOUSE BILL NO. 368

By Representative Shepard

Substituted for: Senate Bill No. 541

By Senator Jackson

AN ACT to amend Tennessee Code Annotated, Section 66-22-101 and Section 66-24-101, relative to authentication of documents for registration or recording in the office of the county register.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 66-24-101(a)(27), is amended by adding the following at the end of such subdivision:

The affiant in the case of any affidavit of scrivener's error may attach a document, including a document previously recorded with corrections made by the affiant with such affidavit.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 23, 2007


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


RON RAMSEY, SPEAKER
SENATE OF THE SENATE

APPROVED this 8th day of May 2007


PHIL BREDESEN, GOVERNOR