



County Technical Assistance Service

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Instruments to be Recorded or Filed

Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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Instruments to be Recorded or Filed

Reference Number: CTAS-772

Most of the instruments recorded or filed in the register's office relate to determining interests or rights in either real or personal property. Some instruments received also deal with a person's legal status with regard to other persons or legal entities.

Bundle of Rights Theory

Reference Number: CTAS-771

Interests in real property are usually conveyed; that is, ownership interests are transferred, by instruments known as deeds. A person may convey all or part of what he or she owns by deed. Ownership interests or estates in land may be thought of as a bundle of sticks. A deed may convey one stick, two or three sticks, or the entire bundle. The person or group of persons, or legal entity such as a corporation, which owns a full bundle of all the "sticks" (all that it is possible to own under our law) has what is known as a fee simple absolute estate in the real property. This type of ownership involves complete control of the land, subject only to the requirements of government such as taxes which can encumber the property, the right of government to take the property for a public purpose for just compensation (power of eminent domain), and land use restrictions in the form of zoning and the prohibition against creating a public nuisance. The owner of the fee can convey interests and still be considered the owner of the fee. An example of this is an easement, which is a right to use the land for a certain purpose, such as movement over the land. Another example is mineral interests. The interests which can be conveyed by deed are known as freehold interests because they do not end at a certain time. Most are perpetual, but need not be, as in the case of the life estate, which is a transfer of interests for the duration of the life of someone alive at the time of the conveyance. The person who has the ownership interest in the future after the expiration of the life estate has a remainder interest. The interest which does not constitute a form of "ownership" but represents a possessory interest for a fixed period of time is a leasehold interest. The transfer of a leasehold interest is by an instrument referred to as a lease agreement or contract.

Even within freehold estates alone, there exists the major division possibility between so-called "legal" and "equitable" interests. "Legal" interests refer to formal legal title and are commonly conveyed to someone who holds this interest "in trust" for the benefit of lenders of money, such as banks and savings and loan associations, by instruments known as deeds of trust which is the usual method in Tennessee of establishing a mortgage. The person conveying the "legal" interest retains the "equitable" interest (an interest a court doing equity will enforce) and is generally considered the "owner" of the property and must pay taxes as the owner, although many mortgage companies pay this and recoup this by payments from the equitable owner. The holder of the legal interest, of course, cannot take possession of the land unless there is default on the loan and unless the terms of the deed of trust allow the trustee to sell the property and to use the proceeds to satisfy the lender.

Going back to our analogy, the "owner" of real property may have the most "sticks," but he or she may have conveyed many other "sticks," such as an easement to a water company to run a pipe line under the surface and along a certain path, mineral or subsurface rights to a coal company, and the "legal" interest to a trustee for the benefit of a bank to secure a loan. Most of these types of transfers of interest are evidenced by some form of deed.

Identification and Purpose of Most Common Instruments Relating to Real Property

Reference Number: CTAS-773

Affidavits of Affixation. An affidavit of affixation is filed where a party who has legal ownership of both real property and a manufactured home(s) on the parcel states that the manufactured home has become affixed to the real property. Pursuant to T.C.A. § 55-3-128, affidavits of affixation are to be filed with the register as separate documents.

Affidavits of Scrivener's Error And Other Affidavits Helping Identify Title To Land. These are affidavits filed to correct drafting errors in instruments or to clarify the identity of title holders to land. 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 the affidavit. T.C.A. § 66-24-101(a)(27).

Appointment of a Substitute Trustee. An appointment of a substitute trustee is an instrument which designates a person as a successor to the trustee originally named in a deed of trust.

Assignment of a Deed of Trust. An assignment of a deed of trust is the transfer of the rights of the lender or mortgagee to another person or institution.

Assumption Agreements. An assumption agreement is an instrument whereby the maker assumes the mortgage (the obligation to pay the loan evidenced by the original note and deed of trust) and becomes personally liable for its payment. The assumption agreement usually appears in a deed and is registered with it, but occasionally it is prepared as a separate document.

Bond to Discharge Lien. A bond to discharge a lien is really a bond to indemnify against a mechanic's or materialmen's lien claim which operates as a discharge of the lien. The bond is conditioned upon the obligor satisfying any judgment that may be rendered in favor of the person asserting the lien.

Court Decrees. Various types of court decrees or orders may be registered which affect title or interests in real estate. Examples are: (1) memoranda of judgments; (2) certified copies of decrees divesting title to land from one person and vesting it in another; (3) certified copies of petitions in bankruptcy and decrees of adjudication.

Deed of Correction. As the name implies, this instrument is used to correct errors made in an original deed. These corrections may be made by the parties in interest or by judicial order.

Deed of Trust. This is an instrument taking the place of and serving the uses of a common law mortgage, by which the legal title to realty is placed in one or more trustees, to secure the repayment of a sum of money or the performance of other conditions. See T.C.A. § 66-24-117 to see how to treat master forms of mortgages or deeds of trust.

Installment Deed. An installment deed provides for the conveyance of equitable interests with the equitable owner paying the consideration in installments, with conveyance of full legal title occurring upon completion of the payments. Until the payments are complete, the seller (grantor) is in a position similar to the beneficiary under a deed of trust.

Instruments Relating To Mineral Claims. Two (2) types of instruments relate to mineral claims.

Declaration of Interest. A declaration of interest is an instrument filed in the register's office by a surface owner to claim an abandoned mineral interest. T.C.A. § 67-5-2502.

Statement of Claim. A statement of claim is an instrument filed in the register's office by a mineral interest owner to preserve that person's claim to an abandoned mineral interest. T.C.A. § 66-5-108.

Liens (Generally). A lien is a claim made on certain real estate to serve as security for a debt. A lien may be voluntarily granted or may arise by operation of law. It constitutes an encumbrance on the real estate. Various types of liens exist, such as tax liens, liens created against a leasehold of gas, oil, or minerals to secure the payment of labor or materials furnished to the lessee, mechanic's (e.g., laborers) and materialmen's liens.

Negative Pledge. An instrument that provides that a party agrees not to take any action regarding any interest in real property, such as a pledge not to mortgage or encumber or transfer certain real property.

Notice of Meth Lab Quarantine / Certificate of Fitness. A notice of meth lab quarantine is a notice filed by a law enforcement official identifying real property where methamphetamine has been manufactured. The signature of a law enforcement official shall be accepted in lieu of acknowledgment. The owner of the real property is deemed the grantor and the agency giving notice is deemed the grantee on this notice. No fees shall be collected by the register for recording the quarantine notice. When the property is deemed safe for human use by an industrial hygienist, a *Certificate of Fitness* may be filed for recording. The owner of the real property is deemed the grantee, and the law enforcement agency that issued the quarantine is the grantor. This certificate must be acknowledged, and fees shall be collected for recording it. T.C.A. § 68-212-507.

Oil, Gas or Mineral Lease. An oil, gas, or mineral lease is a contract conveying a leasehold interest in real property for a specified period to allow the lessee to explore for and remove oil, gas, or minerals for a certain consideration.

Order Sustaining Petition For Condemnation Of Property. This instrument evidences the transfer of private real property to a government or governmental instrumentality by the government's exercise of the power of eminent domain. The land is taken for a public use without the landowner's consent but with compensation to be awarded according to law.

Partition Deed. A partition deed is a conveyance between two or more property holders by which they divide property they hold in common among themselves or as joint tenants each taking a distinct part.

NOTE: Property may be held in common where each person owns a fraction or share, as joint tenants where the interests are undivided and the surviving tenant has a right to the interest of the other joint tenant in the property, and as tenants by the entirety which is a joint tenancy with right of survivorship among married couples.

Plat. A plat is a map or survey of land showing the division of land into parcels or lots and delineating streets, utility easements, and other information relevant to the future use of the land. Once a properly approved plat is registered, lots may be conveyed by reference to the plat's lot number instead of by more particular metes and bounds descriptions.

Quitclaim Deed. A quitclaim deed is a conveyance by the grantor to the grantee of whatever interest, title or claim the grantor has in the property described in the deed. The quitclaim deed does not guarantee title. Such an instrument may convey what is described, or it may not, depending on the status of the grantor's title in the property. These deeds have historically been used to clear up title disputes and to convey supposed interest where title is unclear; but in recent years, it has been used in lieu of a warranty deed to try to avoid the state real estate transfer tax. This subject will be dealt with further in the later section on the state taxes.

Real Estate Contract. A real estate contract is an agreement between the seller (grantor) and buyer (grantee) for the seller to convey certain described real estate for a certain consideration. This is not an option contract because the rights and duties of the parties have become fixed. The buyer obtains an equitable interest in the real estate through the contract, but does not obtain legal title until the deed is actually delivered.

Restrictive Covenant. A restrictive covenant is an agreement between grantor and grantee restricting or regulating the use of the real property or the location, kind or character of buildings or structures which may be erected. The restrictive covenant generally binds the grantee's successors in title. Restrictive covenants are usually incorporated in a deed, but these agreements may be created in a separate instrument.

Timber Deed. A timber deed is a conveyance of living trees upon certain described land. Timber is considered to be a part of the real estate until cut and removed from the land, whence it becomes personal property.

Warranty Deed. A warranty deed is the most common form of conveyance of a freehold interest, whether it is the conveyance of a fee simple or a life estate. This instrument is called a warranty deed because the grantor warrants or guarantees to the grantee that the grantor is the lawful holder of the interest or interests which are conveyed and is obligated to defend the title, which is to say, to bear the expense of defending the title in court.

Wills. A will is an instrument effective upon the death of a testator (maker of the will) wherein the testator transfers his or her property. Title to real estate may be devised (transferred) by will in Tennessee. Wills are probated (proved) and are of record in the office of the probate court clerk (usually clerk and master, sometimes county clerk). Copies of probated wills, certified by the clerk of the court where probated, in this state or another state, may be registered in the county where the land lies as a muniment (evidence of title) T.C.A. § 32-5-109. Wills devising land in Tennessee or certified copies thereof may be recorded only if duly admitted to probate in Tennessee and the will is presented for recording together with copies of related probate orders. T.C.A. § 66-24-101(a)(16).

Instruments Affecting Interests in Personal Property

Reference Number: CTAS-774

Instruments evidencing ownership interests in personal property, such as bills of sale or simple contracts of sale of personal property, usually are not registered, but may be registered. (See T.C.A. § 66-24-101 for a listing of most instruments eligible for registration.) All agreements for the conveyance of real or personal property are eligible for registration. T.C.A. § 66-24-101(a)(1) & (5).

Uniform Commercial Code Records

Reference Number: CTAS-775

When personal property, including personal property affixed to real estate, is used as security for debt, the Uniform Commercial Code (UCC) usually governs the transaction. The UCC is a body of statutory law based on a model code which has been adopted by almost all of the states of the Union, with minor variations from state to state, so that the law governing commercial transactions such as the law of sales, commercial paper, bank deposits and collection, letters of credit, bulk transfers, and secured transactions will be as similar as possible across the nation in order to facilitate commerce. The register's office is impacted by the requirements of Article 9 of the UCC dealing with secured transactions, and more particularly, Part 5 dealing with filing. The Tennessee version of Article 9 is found in Chapter 9 of Title 47, Tennessee Code Annotated. Basically, the Chapter (Article) 9 framework involves the filing of documents to provide notice of liens on personal property and fixtures. Not all UCC Article 9 records are filed with the Register. Most are filed with the Secretary of State. Initial financing statements that are filed in Tennessee should be filed with the Secretary of State except the following which should be filed with the Register of Deeds:

1. Initial financing statements with "as extracted" collateral; "as extracted" collateral means oil, gas, or other minerals that are subject to a security interest that is created by a debtor having an interest in the minerals before extraction and attaches to the minerals as extracted, or accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.
2. Initial financing statements with timber to be cut as collateral;
3. Fixture filings--initial financing statements where the collateral is goods that are or are to become fixtures (goods that have become so related to particular real property that an interest in them arises under real property law), except where the filing's collateral, including fixtures, is of a transmitting utility -- these should be filed with the Secretary of State. A "transmitting utility" includes railways, pipelines, sewers, transmitting communications (whether electrically, electromagnetically or by light). T.C.A. §§ 47-9-501, 47-9-102.

Some financing statements formerly filed in Tennessee should be filed in another state under the new law.

The Register should not advise the customer regarding the proper place to file a UCC record, but may suggest that the customer should consult with his attorney to determine the proper place to file to perfect the security interest.

Identification and Purpose of UCC Instruments (Records)

Reference Number: CTAS-776

Amendment. A record which modifies a filed financing statement; includes the formerly separate assignment, continuation statement, release (now referred to as a collateral change), and termination statement as well as the former amendment function. An amendment must contain the file number of the initial financing statement that is being amended.

Assignment. An amendment to the initial financing statement or a component of an initial financing statement that transfers a security interest to a new secured party. A separate amendment with an assignment must contain the file number of the initial financing statement.

Continuation Statement. An amendment to the initial financing statement which identifies, by its file number, the initial financing statement to which it relates and indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement. T.C.A. § 47-9-102(27).

Financing Statement. This record is a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

Information Statement. A record which identifies the record to which it relates by file number assigned to the initial financing statement, indicates that it is an information statement and provides the basis for the person's belief that the earlier filed record is inaccurate and indicates the manner in which the person believes the record should be amended to cure any inaccuracy or the basis for the person's belief that the earlier record should not have been filed. T.C.A. § 47-9-518.

Initial Financing Statement. A summary or abstract of a security agreement that contains information designed to place the public on notice concerning the basic facts of the security interest that has been

created. At a minimum, it identifies the debtor and secured party and the collateral subject to the security agreement. An initial financing statement may also include an assignment of the security interest to a new secured party. The initial financing statement may state that the document is to be recorded in the real estate records.

Release. An amendment whereby a secured party ceases to have a lien on certain "released" collateral. This was a separate instrument under the former UCC. The current UCC provides for the deletion of collateral on the amendment form. The term "release" is not a part of the vocabulary of the current UCC law. Instead, the partial release of collateral is referred to as a collateral change. The amendment deleting collateral from that given in the initial financing statement must contain the file number of the initial financing statement.

Security Agreement. The security agreement is the basic instrument which creates or provides for a security interest and establishes the terms of the secured transaction. T.C.A. § 47-9-102(74). This is often a long and detailed legal instrument and usually is not filed with either the register or the Secretary of State.

Termination Statements. A termination statement is an amendment of a financing statement which identifies, by its file number, the initial financing statement to which it relates, and indicates either that it is a termination statement or that the identified financing statement is no longer effective. T.C.A. § 47-9-102(80).

Other Documents

Reference Number: CTAS-777

The register's office receives for registration documents which have legal significance other than the ones already mentioned affecting real or personal property. The following is a short description of some of the other instruments that the Register is likely to encounter.

Depositions. Under the Rules of Civil Procedure (Rule 27.04), a deposition to perpetuate testimony is filed with the clerk of the court in which the action is pending or in which the petition was filed. A copy of the deposition may also be sent to the register in the county where the petition was filed, and the register records such copies.

Officials' Bonds. The various county officials are required to obtain bonds payable to the state or county which protect the state or county against loss of funds handled by these officials. These bonds are recorded in the register's office. T.C.A. § 8-19-103.

Powers Of Attorney. Powers of attorney are instruments whereby the maker grants to another party or parties the authority to act for the maker with regard to some or all of the maker's property and to exercise some or all of the maker's legal rights. Also, durable powers of attorney for health care allow the maker to grant to another party the power to make certain decisions regarding health care for the maker. Powers of attorney may be revoked by the maker in a later document.

Revenue Reports. The clerks of the various courts operating in the county are required by statute (T.C.A. § 9-2-109) to file with the register reports on the revenue collected by the clerk.

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