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Identification and Purpose of Most Common Instruments Relating to Real Property

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained 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 CTAS website material.

Sincerely,

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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).

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