

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
500 CHARLOTTE AVENUE
NASHVILLE, TENNESSEE 37243

November 10, 2004

Opinion No. 04-161

Tenn. Code Ann. § 66-5-106

QUESTIONS

1. Does a deed transferring ownership of land from an applicant for TennCare long-term care benefits to another party constitute a valid transfer of property on the date of execution of the deed absent registration of the instrument in the county register's office? Does such deed preclude the TennCare Bureau from pursuing estate recovery against the property upon the death of the seller under Tenn. Code Ann. § 71-5-116?

2. If yes, is this transfer valid as to the State of Tennessee, Bureau of TennCare?

OPINIONS¹

1. In our opinion, the answer to both questions is generally no. To be valid against strangers (persons other than the actual parties to the transaction), the transfer must be registered at the county register's office where the land lies.

2. This question is pretermitted.

ANALYSIS

1. Tenn. Code Ann. § 66-5-106 requires that all deeds of conveyance for land must be registered by the register of deeds to validly pass property interests in land from one person to another:

No deed of conveyance for lands, in whatever manner or form drawn, shall be good and available in law, as to strangers, unless it is acknowledged by the vendor, or proved by two (2) witnesses upon oath, in the manner prescribed in chapters 22 and 23 of this title, and

¹This opinion does not address assets transferred during the "look-back" period because a Medicaid/TennCare applicant would be ineligible if that person (or the person's spouse) transferred any nonexempt "asset(s)" or his or her home for less than fair market value during the 36 month period (referred to as "look-back" period) before applying for Medicaid while institutionalized. *See* 42 U.S.C. § 1396p(c)(1)(B)(i).

registered by the register of the county where the land lies. All deeds so executed shall be valid and pass estates in land, or right to other estates, without livery of seisin, attornment, or other ceremony in the law whatever.

Without such registration, any conveyance of land is void as to all strangers, including TennCare. The plain meaning of this statute is further supported by the legal definition of “stranger;” *i.e.*, “one who is not a party to a given transaction.” Black’s Law Dictionary, p.1461 (8th ed. 2004). Without an acknowledgment or registration, a deed is effective between the parties but not effective as to other parties without notice. *REM Enterprises, Ltd. v. Frye*, 937 S.W.2d 920 (Tenn. App. 1996), citing *In re West v. United American Bank*, 23 B.R. 48 (Bankr. E.D.Tenn. 1982). Thus, failure to register a deed of conveyance for real property means that such transfer has not occurred and that the property is still owned by the seller.²

Other code sections contain the same requirement of registration. An unregistered deed is invalid as to other parties until registered in the county where the property described in the deed is situated. Tenn. Code Ann. §§ 66-26-101, 66-26-103. Pursuant to Tenn. Code Ann. § 66-26-101, failure to register a deed makes the deed of no effect upon persons having no actual notice of the instrument, unless an exception to this is expressly set out in the Tennessee Code. Thus, if a transfer of real property is not registered, the transfer will not apply to TennCare, and it will be as if the property were still in the possession of the seller.

Moreover, an instrument not proved, or acknowledged **and** registered, is null and void as to existing or subsequent creditors of, or bona fide purchasers from, the maker without notice. Tenn. Code Ann. § 66-26-103 (emphasis added). *See also Adrian v. Brown*, 29 Tenn. App. 236, 196 S.W.2d 118 (1946) (the registration of a deed is necessary to make it binding upon existing or subsequent creditors); *Bradley v. Boyd*, 168 Tenn. 141, 76 S.W.2d 318 (1934) (even though creditors had not reduced their claims to a judgment, creditors could still file a claim in Chancery Court for a fraudulent conveyance; this claim could be defeated only by creditors’ failure to establish the debt or the fraud). *But see Chester v. Greer*, 24 Tenn.(5 Hum.) 26 (1844) (no one can be regarded as a creditor until he has established his claim by a judgment). Thus, the TennCare Bureau would also be able to include any such invalidly transferred real property within the estate of the decedent, for purposes of engaging in estate recovery under Tenn. Code Ann. § 71-5-116, so long as that property had not been subsequently sold to a bona fide purchaser for value who had registered the deed³.

²This rule would not apply as between the seller and the purchaser of the particular parcel of real property.

³For example: A conveys the real property to B without registering the deed, and this transaction is unknown to TennCare prior to A’s death but while A is receiving Medicaid/TennCare long-term care benefits. B sells the property to C for full value, and C, who has no knowledge of the prior unregistered deed, records the deed with the register. It would be unlikely that the TennCare Bureau would be able to rescind the sale from B to C and have the property returned to A’s estate after A dies. *See Associates Financial Services of America, Inc. v. Dist. of Columbia*, 689 A.2d 1217 (D.C. App. Ct. 1997).

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

SHAYNA ABRAMS
Assistant Attorney General

Requested by:

Deputy Commissioner
Bureau of TennCare
729 Church Street
Nashville, TN 37247-0492