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Opinion No. 03-057

Removal of Recorded Deed

QUESTION

If a deputy register accepts and records an instrument that the register of deeds later determines is not entitled to registration, may the register of deeds remove the record from the record books?

OPINION

No. But the register could record a document reflecting his or her subsequent determination that the instrument is not entitled to registration, and include a reference to that later document on the face of the instrument in question. The register should also notify the person who recorded the deed of this action.

ANALYSIS

This request concerns the authority of a county register of deeds. That office is governed by Tenn. Code Ann. §§ 8-13-101, *et seq.* Under Tenn. Code Ann. § 8-13-108(a), among other duties, it is the duty of the register to:

> (1) Determine whether each instrument offered for registration is entitled to registration under the laws of this state;
>
> (2) If the instrument is accepted for registration, note on the instrument the time the instrument is actually received by the register;
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> * * * *
>
> (7) Carefully preserve as permanent records the *recorded copies of all deeds, deeds of trust and other instruments affecting interests in real estate[.]*

Tenn. Code Ann. § 8-13-108(a)(1), (2) & (7) (emphasis added). Under Tenn. Code Ann. § 8-13-105:

> The register may appoint a deputy or deputies and, in case of the principal's death, resignation or removal, the principal deputy shall continue to act until an appointment shall be made to fill the vacancy, in the manner prescribed by law. *All deeds registered by deputies are declared to be validly registered.*

(Emphasis added). Tenn. Code Ann. § 8-13-110 provides:

> Upon failure to perform any official duties, the register may be indicted for a Class C misdemeanor and the register and the register's sureties shall be civilly responsible to any person injured by the failure.

The question is whether, if a deputy register accepts and records an instrument that the register of deeds later determines is not entitled to registration, the register may remove the records from the record books. The request does not indicate why the register determined that the instrument was not entitled to be recorded. In 1929, the Florida Supreme Court found that a clerk who had unlawfully recorded an unproved and unacknowledged sales agreement that was not entitled to recordation was required to expunge it from the record. *Leatherman v. Schwab,* 98 Fla. 885, 124 So. 459 (Fla. 1929). But no Tennessee case directly addresses the issue, and removing an instrument after it has been accepted for recording would be inconsistent with several Tennessee statutes.

Under Tenn. Code Ann. § 8-13-105, a deed registered by a deputy register is declared validly registered. Under this statute, we think the General Assembly intended to provide that, once a deputy register accepts and registers a deed, the individual who submitted the deed is entitled to rely on the validity of the registration, even though the act of registration was not performed personally by the register of deeds. Further, under § 8-13-108(a)(7), a register of deeds is required to preserve recorded deeds. Records kept in the office of the county register of deeds are "public records" that may be destroyed only with the authorization of the county public records commission. Tenn. Code Ann. § 10-7-403(1); Tenn. Code Ann. § 10-7-404(a). Under state law, it is a Class A misdemeanor to "[intentionally and unlawfully destroy, conceal, remove or otherwise impair the verity, legibility or availability of a governmental record." Tenn. Code Ann. § 39-16-504(a)(3). For these reasons, a register of deeds is not entitled to remove an instrument that has been accepted and recorded by a deputy register of deeds, even if the register later determines that the deed was not entitled to registration.

We think, however, that the register of deeds is authorized to record his or her determination that the instrument was not entitled to recording. The Tennessee Supreme Court has recognized that a register of deeds may correct a deed that was incorrectly registered. *Baldwin v. Marshall,* 21 Tenn. 116 (1840). This Office has also concluded that a register of deeds may correct a deed that was altered after it was recorded. Op. Tenn. Atty. Gen. U88-53 (May 4, 1988). A recording officer may correct errors and make amendments and corrections in his or her records only as are necessary to make them speak the truth, provided that a record is maintained of both the error and the correction in such a manner that anyone

consulting the records will be fully apprised both of the error and the correction, and the time and manner of each. *Pacific National Bank of Seattle v. Kramer*, 77 Wash.2d 899, 468 P.2d 436 (Wash. 1970). We think the register of deeds may record his or her determination that the instrument was not entitled to recording, and stamp the original instrument with a cross reference to the document on which that determination is recorded. The register should also notify the person who recorded the deed of this action.

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