



August 8, 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.

PUBLIC CHAPTER 420 (ELECTRONIC RECORDING ACT)

Public Chapter 420 came about because of the confusion regarding taking electronic documents that were scanned copies of paper originals. Registers will now be able to take actual electronic documents (either created or retained pursuant to the Uniform Electronic Transactions Act or the Uniform Real Property Electronic Recording Act) or the more likely case, copies of electronic documents, as long as the documents are

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otherwise eligible for recording and as long as the documents have a written certification from an attorney or the document custodian, which states the electronic version is a true and correct copy of the original document. This certification must be signed and notarized and should be recorded as part of the document. The actual certification language is set out in subsection (d)(2).

Public Chapter 420 also clarifies that electronic documents registered prior to July 1, 2007, are to be considered validly registered with or without the certification. Additionally, the bill makes it clear that registers are not required to take electronic documents—it simply sets out the rules should registers choose to do so.

Public Chapter 420 also enacts the Uniform Real Property Electronic Recording Act (“URPERA”). This act has been adopted in other states with the goal of making the electronic recording process more uniform throughout the country.

Highlights of the URPERA include:

- Any sort of original document requirement may be satisfied by an electronic document.
- Any signature requirement may be met by an electronic signature or a digitized image of a wet signature.
- Any notary or acknowledgment requirement may be met if the electronic signature or digitized signature of the person notarizing or acknowledging the document is attached or logically associated with the document. Also, a physical or electronic image of the notary stamp or seal does not have to accompany the electronic signature.
- Registers may take an electronic copy of a paper document (as long as the proper certification is attached).
- Registers may accept fees electronically.
- Registers may convert recorded paper documents into electronic format.
- Finally, the standards for registers implementing these functions are to be established by the information systems council.

Public Chapter 420 is effective July 1, 2007.

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