

Public Records

Judge Greg Cain

Morgan County Judge of Probate

Requirements

- ▶ Judges of probate must keep large and well-bound books for recording, word for word, conveyances of property and all other instruments authorized to be recorded, together with acknowledgments, proofs, schedules, plats, surveys, or other necessary attachments. [§ 35-4-58].
- ▶ The judge must indicate in the margin of the instrument the day, month, and year that instruments are received for recording. A signed certificate must also be made on the instrument showing when it was received and recorded together with the book and page in which it was recorded.

Requirements

- ▶ The judge of probate is required to preserve all documents, files, papers, and letters, together with all attachments required by law to be recorded and filed in his office. These records must be kept in a manner to permit convenient reference. [§§ 12-13-41 and 36-12-2].
- ▶ Furthermore, uniformity in size and style of records and books must be maintained, and records must be in ink and on paper of quality sufficient to ensure permanence. [§ 36-12-3].

Requirements

- ▶ Unless otherwise provided by law, all records are open to public inspection and, when requested, the judge must furnish copies of them upon the payment of lawful fees. [§ 12-13-50].
- ▶ However, the regular copy fee **may not** be assessed if individuals use personal cameras or other electronic devices to make a copy of a public record. [Ala. A.G. Opinion No. 2009-706]
- ▶ Nonetheless, reasonable limitations may be placed upon the public's access to records and the public's ability to use personal electronic devices to duplicate records to ensure that the operations of such actions do not unduly interfere with the operations of the office. [Ala. A. G. Opinion No. 2009-706 and A.G. Opinion No. 1992-00154]

Requirements

- ▶ Alternatively, the Probate Court may provide access to the general public, via a website, to the digitized images of probate documents maintained by the Probate Court, without charging a fee, in addition to providing for courthouse public examination of probate documents. Ala. A.G. Opinion 2001-004 (Oct. 10, 2000).

Recordation Tax

- ▶ In Alabama, recording property instruments requires specific criteria to ensure proper documentation and taxation. Any deed, bill of sale, or similar instrument conveying property must have the privilege or license tax paid before recording. This tax is based on the property's value, with a minimum fee of \$0.50 for properties valued at \$500 or less, and an additional \$0.50 for each \$500 increment above that threshold.
- ▶ ***Deed and Mortgage Tax.*** Before recording any deed or mortgage the judge of probate must collect the prescribed tax on all deeds and mortgages. Failure to do so is a misdemeanor punishable by a fine of between \$10 - \$100. [§ 12-13-53].

Recordation Tax

- ▶ In A.G. Opinion 2005-109 in an opinion issued to Tommy Ragland, the A.G. maintained its prior position that "deed and mortgage taxes are not taxes on real property or tangible personal property, but are privilege taxes paid on or for the filing of these documents."

Attorney General Opinions re: deed tax collection/exemptions

- ▶ AG opinion 2000-070. Tax is due on deed to trustee, even where the grantor and trustee are the same individual. Tax is due upon the privilege of recording.
- ▶ AG opinion 2000-125. Tax is due on deed that transfers separate parcels of property in separate deeds owned by an individual to that same individual in a single deed.
- ▶ AG opinion 79-00020. Tax is due when an executor conveys to a beneficiary under a Will if title does not pass *eo instanti* (at that instant) - such as when an Executor must make a determination of who gets what property under the Will to satisfy a devise of a certain value.
- ▶ AG opinion 89-00280. Tax is due when changing the nature of the title, such as from joint tenancy to tenants in common, even when it is the same people. Tax is due on the privilege of recordation based on the value of the property, not on the price paid.
- ▶ AG opinion 2001-239. Tax is due on the full value of a deed from husband and wife conveying to only wife, unless it is clear that only a one-half interest is being conveyed.
- ▶ AG opinion 2011-033. Tax is due on the value of the property, not necessarily the price paid (important for tax sales, foreclosures to third parties, and non-arm's length transactions or purchases with extenuating circumstances).

What is required for Deeds, Easements and Sales Contracts with RT-1 Form

- ▶ Instrument prepared by: Name and address (Ala. Code 35-4-11-
- ▶ Name and marital status of the Grantor(s) (Ala. Code 35-4-73
- ▶ Legal description of the Property
- ▶ Plat Book and Page, (if applicable) (Ala. Code 35-4-74)
- ▶ Signature (s)
- ▶ Notary (or two witnesses) (Ala. Code 35-4-20)

What is required for Deeds, Easements and Sales Contracts without RT-1 Form

- ▶ Instrument prepared by: Name and address (Ala. Code 35-4-11-
- ▶ Name and marital status of the Grantor(s) (Ala. Code 35-4-73)
- ▶ Mailing address of the Grantor(s) (Local Act No. 81-651) (§ 45-52-84.22)
- ▶ Name of the Grantee(s) Mailing address of the Grantee(s) (Local Act No. 81-651) (§ 45-52-84.22)
 - ▶ "...The Judge of Probate of Morgan County shall not receive for record or permit the recording of any real property deed, unless such instrument has endorsed on it a printed, typewritten, or stamped statement, stating the mailing address of the grantor or grantee, respectively, or contains a statement of such addresses in the body of the instrument...."
- ▶ Amount of Consideration

What is required for Deeds, Easements and Sales Contracts without RT-1 Form

- ▶ Date of Sale
- ▶ Property Address (Physical address of property) - If no address, must say no 911 address - need name of street/road, city state, and zip code
- ▶ Legal description of the Property
- ▶ Plat Book and Page, (if applicable) (Ala. Code 35-4-74)
- ▶ Signature (s) (Ala. Code 35-4-20)
- ▶ Notary (or two witnesses) (Ala. Code 35-4-20)

Mortgage, Assignments of Rents, and Subordinate Mortgages

- ▶ Instrument Prepared by: Name and Address (Ala. Code 35-4-110)
- ▶ Name of the Mortgagor(s) (AG Opinion 79-0266)
- ▶ Legal Description of Property
- ▶ Plat Book and Page if applicable (Ala. Code 3504-74)
- ▶ Signature (s)
- ▶ Notary (or two witnesses)

Modifications

- ▶ Instrument Prepared by: Name and Address (Ala. Code 35-4-110)
- ▶ Name of the Mortgagor(s) (AG Opinion 79-0266)
- ▶ Book and Page of the original mortgage
- ▶ Signature(s)
- ▶ Notary (or two witnesses)

Pitfalls

- ▶ Local Fees
- ▶ Local Acts
- ▶ If time is of the essence pay the fee and then request a refund