

Memorandum

TO: REGISTER OF DEEDS
FROM: DAVID C. CUNNINGHAM, DIRECTOR
DATE: DECEMBER 5, 1994

The enclosed copy of Directive 94-028 officially replaces Directive 92-016 as of the date on the directive.

Due to recent legislation, two new exemptions have been added to Directive 094-028 under paragraph 1.

- (14) *made by a guardian, executor, administrator, conservator or trustee of an estate pursuant to judicial order; or*
- (15) *when title is transferred due to repossession.*

In addition, paragraph 2 has been rewritten and now reads as follows:

- 2. *The Division of Property Valuation supplies a three-part real estate sales validation questionnaire (form number PV-RE-21) which is required when either an affidavit of equitable interest or deed in real estate is recorded in the office of register of deeds. Only counties using document image processing applications and having prior written approval from the director may use a special one-part version of form PV-RE-21. Photocopies are not acceptable.*

Should you have further questions, please contact either Pete Davis, Ration Study Supervisor, (913/296-3770) or Nancy Tomberlin, Ratio Study Coordinator (913/296-3572).

DIRECTIVE 94-028

TO: Register of Deeds

SUBJECT: Real Estate Sales Validation Questionnaires; Filing Requirements
(To replace Directive #92-016)

This directive is adopted pursuant to the provisions of L. 1992, ch. 249, § 1, and shall be in force and effect from and after the Director's approval date.

Register of Deeds shall comply with the following procedures in handling and processing real estate sales validation questionnaires.

1. The only exceptions to the requirement to file a real estate sales validation questionnaire are statutory.

K.S.A. 1991 Supp. 79-1437e(a), as amended by L. 1992, ch. 159 § 2, provides:

The real estate sales validation questionnaire required shall not apply to transfers of title:

- (1) recorded prior to the effective date of this act;
- (2) made solely for the purpose of securing or releasing security for a debt or other obligation;
- (3) made for the purpose of confirming, correcting, modifying or supplementing a deed previously recorded, and without additional consideration;
- (4) by way of gift, donation or contribution stated in the deed or other instrument;
- (5) to cemetery lots;
- (6) by leases and transfers of severed mineral interests;
- (7) to a trust, and without consideration;
- (8) resulting from a divorce settlement where one party transfers interest in property to the other;
- (9) made solely for the purpose of creating a joint tenancy or tenancy in common;
- (10) by way of a sheriff's deed;
- (11) by way of a deed which has been in escrow for longer than five years;
- (12) by way of a quit claim deed filed for the purpose of clearing title encumbrances;
or
- (13) when title is transferred to convey right-of-way or pursuant to eminent domain.
- (14) made by a guardian, executor, administrator, conservator or trustee of an estate pursuant to judicial order; or
- (15) when title is transferred due to repossession.

The Division of Property Valuation supplies a three-part real estate sales validation questionnaire (form number PV-RE-21) which is required when either an affidavit of equitable interest or deed in real estate is recorded in the office of register of deeds. Only counties using document image processing applications and having prior written approval from the director may use a special one-part version of form PV-RE-21. Photocopies are not acceptable.

3. The "total sale price" must be entered on the real estate sales validation questionnaire. If one dollar (\$1.00), ten dollars (\$10.00) or any nominal sale price is entered on the real estate sales validation questionnaire, the register of deeds shall question the accuracy of the sale price as entered. If the grantor or grantee affirms that the sale price as entered is correct, the deed should be recorded.
4. A real estate sales validation questionnaire is not required on a trust deed that states "without consideration" or that has one dollar (\$1.00), ten dollars (\$10.00) or some other nominal value entered thereon. "Without consideration" as used in K.S.A. 79-1437(e)(7), as amended by L. 1992, ch. a59, § 2, means "gift." Therefore, an entered consideration of one dollar (\$1), ten dollars (\$10) or "love and affection" on a trust deed shall be construed as a "gift," and the deed accepted without a real estate sales validation questionnaire. However, if the phrase "one dollar (\$1.00) and other valuable consideration" has been entered on the deed, a real estate sales validation questionnaire is required to record the deed.
5. Any person with authority to execute a deed or other instrument conveying real property may sign the real estate sales validation questionnaire.
6. If government entity, such as county, conveys real property, the real estate sales validation questionnaire must be signed by the government official(s) who signed the deed.
7. An agent may complete the real estate sales validation questionnaire and have the grantor or grantee sign it.
8. Multiple deeds conveying partial interests and filed simultaneously, do not require multiple real estate sales validation questionnaires, provided the real estate sales validation questionnaire filed is annotated to state that the consideration entered thereon is the total consideration for the transfer of the entire interest. The register of deeds shall indicate in the upper left hand corner of the real estate sales validation questionnaire the deed book and page number range assigned to the corresponding deeds.
9. A real estate sales validation questionnaire with the phrase "other valuable consideration" entered as the sales price shall not be accepted. It shall be returned for the sale price to be entered before the deed, instrument or affidavit may be recorded.
10. The Register of Deeds has a legal obligation to see that the real estate sales validation questionnaire is completed. At a minimum, this requires that each real estate sales validation questionnaire be scrutinized for completion of the identification and location information and all questions thereon.
11. A real estate sales validation questionnaire without every question answered, including the sale price, the signature and phone numbers entered is not "completed". Incomplete real estate sales validation questionnaires accompanied by the deed, other instrument transferring title to real estate or affidavit of equitable interest must be returned to the filer with notice that such deed, instrument or affidavit has not been recorded.

12. The phrase "made for the purpose of confirming, correcting, modifying or supplementing a deed previously recorded, and without additional consideration," (K.S.A. 79-1437e) is explained as follows:

Confirm means "to complete or establish that which was imperfect or uncertain; to ratify what has been done without authority or insufficiently; to make firm or certain; to give new assurance of truth or certainty; to put aside past doubt; to give approval to." Black's Law Dictionary 270 (5th ed. 1979). **Correct** means "to remove errors from." Webster's II New Riverside University Dictionary 314 (1984). **Modify** means "to alter; to change in incidental or subordinate features." Black's Law Dictionary 905 (5th ed. 1979). **Supplement** means "something added to offset a deficiency, or strengthen the whole; a section added to a document to provide additional data, or to correct errors." Webster's II New Riverside Dictionary 1163 (1984). The recurrent theme of these definitions is an incidental change, not a change in substance. In the case of a deed previously recorded, this would mean that the change does not change the grantor or the grantee (although, e.g., a change may be made in the spelling of the grantor's or grantee's name). Whatever the change, the intent to convey the real property to a named person or entity is not changed. Also, there can be no additional consideration.

13. It is a misdemeanor to falsify the value of real estate transferred on a real estate sales validation questionnaire (K.S.A. 1991 Supp. 79-1437 g, as amended by L. 1992, ch. 159, § 3). Any Register of Deeds or other county official who has information or suspects that a real estate sales validation questionnaire has been falsified shall notify the County Attorney or County Counselor for possible legal action.
14. Photocopies of real estate sales validation questionnaires may be obtained by those individuals who have statutory access to them (K.S.A. 1991 Supp. 79-1437f, as amended by L. 1992, ch. 282, § 19). K.S.A. 45-219(a) provides that any person may make abstracts or copies of any public record to which such person has access under the Open Records Act. Public officials may require advance payment of the actual cost of furnishing copies, including the cost of staff time, to make the information available. K.S.A. 45-218(f); K.S.A. 45-219(c)(1).

Approved: 12-8-94

David C. Cunningham
Director of Property Valuation

