



The Importance of Proper Document Execution

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Alabama has the least stringent execution standards of the four states we handle. All that is required by statute is attestation by one witness. See Ala. Code § 35-4-20. A notary acknowledgment can satisfy the witness attestation requirement pursuant (see Ala. Code §35-4-22) and must be taken by an officer as prescribed by Ala. Code § 35-4-23, which includes a notary public. While the law provides that no notary is required, most title underwriters require a notary acknowledgment and thus, this is the most common form on modern deeds.

Alabama has a “Savings Statute” which provides that a recorded deed, which is not properly executed, “operates to provide notice of the contents of such conveyance or instrument without any acknowledgment or probate thereof as required by law.” See Ala. Code §35-4-63.

Spouses have an interest in the marital homestead, and thus, are required to execute mortgages on the marital home even when not on title to the property. See Ala. Code § 6-10-3, which holds that a mortgage is not valid without the voluntary signature and assent of the husband or wife.

Georgia has two statutes regarding deed execution that must be taken together to ensure your documents are entitled to recording. O.C.G.A § 44-5-30 requires 2 attesting witnesses for the signature. That means two witnesses that actually see the signor execute the document. O.C.G.A. § 44-2-15 requires that one official witness (usually a Notary) attest to the document. The Notary can act as your 2nd attesting witness in addition to acting as your official witness. By its own wording, an acknowledgment states that the signor merely acknowledged that the document was signed, but does not have the necessary language for the notary to act as the 2nd attesting witness.

An acknowledgment by a notary public does not obviate the necessity of attestation by two witnesses, whether the instrument is signed in Georgia or in another jurisdiction. Further, Georgia has no Savings Statute, and therefore, a defectively executed document provides neither constructive nor inquiry notice to a bona fide purchaser. There are two fairly recent Georgia Supreme Court opinions that illustrate cases where a bankruptcy trustee was allowed to avoid defectively executed security deeds despite actual notice. Because the Trustee is afforded hypothetical bona fide purchaser status under 11 USC § 544, it is imperative that execution be done properly or cured as soon as discovered to avoid being treated as unsecured in a bankruptcy situation.

Georgia has no marital rights or homestead exemption, and thus, as spouse is not required to sign unless they have a recorded title interest. If the owners own the property as joint tenants with right of survivorship, it is imperative that all owners sign or the Security Deed will only

attach to the survivorship interest (and thus, could be avoided completely if the survivor did not execute the deed).

Mississippi requires a notary acknowledgment for recording of deeds. See Miss. Code Ann. § 89-3-1 (1). If the document is not properly executed, the clerk may refuse to record it however, Mississippi does have a Savings Statute. Therefore, if an improperly acknowledged document is recorded, it provides constructive notice to all persons as to the contents of the instrument if the document was recorded after July 1, 2011. Miss. Code Ann. § 89-3-1(2)

Pursuant to Miss. Code Ann. § 85-3-21 and 85-3-21, spouses are entitled to a homestead exemption on the martial homestead, even if they have no recorded title interest in the property. Further, any husband, wife, widow or widower over the age of sixty (6)) cannot be deprived of the exemption due to not residing in the property. This interest cannot exceed \$75,000 as to real property. As a result, spouses need to execute Deeds of Trust in Mississippi on any non-purchase money mortgage to ensure the homestead exemption of the non-titled spouse is encumbered (and subordinate) to the loan. Further, Mississippi law holds that a Deed of Trust is null and void as a matter of law due to a spouse's failure to sign the Deed of Trust. See Miss. Code Ann. § 89-1-29. Purchase Money Mortgages are excluded from this harsh rule. See Jarvis v. Armstrong, 94 Miss. 145 (1909); Billingsley v. Niblett, 56 Miss. 537 (1879)

Tennessee law provides that any instrument must either be "...acknowledged according to law or proved by at least two (2) subscribing witnesses." Tenn. Code Ann. § 66-22-101. Because the process for authenticating the document using the two subscribing witnesses is complicated (See Tenn. Code Ann. § 66-22-101 *et seq.*) and due to the requirements of Tennessee Title Underwriters, the most common form of execution is acknowledgment by a notary public. The register of deeds is entitled to refuse any document that is not properly authenticated, however, a defective document that has been recorded provides constructive notice to all parties as to the contents of the document pursuant to Tenn. Code Ann. § 66-24-101 (e)(2).

Pursuant to Tenn. Code Ann. § 26-2-301, spouses are entitled to a homestead exemption on the martial homestead, even if they have no recorded title interest in the property. The maximum value of this interest is \$7500. As a result, all spouses should execute any non-purchase money mortgage to ensure the Deed of Trust is properly perfected as to the entire property.

Due to the varying execution laws in each jurisdiction, it is important to be aware of the nuances and repercussions of improper execution when examining title for closing or foreclosure. Deeds that do not comply with the applicable laws can result in a full failure of title or being treated as unsecured in a bankruptcy.