




**BILL GARRETT
REGISTER OF DEEDS**

P.O. Box 196398 Nashville, TN 37219-6398 615-862-6790 www.nashville.gov/rod

Memorandum

To: Clients and Staff of the Davidson County Register of Deeds Office
From: Bill Garrett 
Date: 3/27/2007
Re: Re-record procedure

As you know, we have re-recorded many documents without a new signature and authentication. That practice is no longer acceptable. Any re-record must have a new signature and authentication.

A legal opinion that supports this change in procedure is attached.

Attachment



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March 27, 2007

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**Legal Opinion - Re-records
Ron Fults, CTAS**

Re-record means a document that has been recorded in your office and has some change made on it and is offered for recording again.

TCA 66-22-101 states:

Unless otherwise provided by law, to authenticate an instrument or document for registration or recording in the office of the county register, the maker or the natural person acting on behalf of the maker shall execute the instrument or document by that person's original signature and such signature shall be either acknowledged according to law or proved by at least two (2) subscribing witnesses. The county register may refuse to record any instrument or document not authenticated in accordance with this section.

Therefore, if any change is made to the original document (or a certified copy of the original), it is a new writing and a new original signature is needed and a new acknowledgement (or 2 witnesses' signature). Therefore, unless there is a new signature and authentication relating to the new writing, the document should not be recorded. The law was amended in 2004 to add the last sentence quoted above to make it clear that the register may refuse to record such unauthenticated documents. The case law has made it clear for years that the courts will treat such unauthenticated documents as not legally registered, null and void, even if they are in fact registered: *Hayes v. State*, 213 Tenn. 447, 374 S.W.2d 392 (1964), *Lemeh v. EMC Mortgage Corp.*, 81 S.W. 3d 764 (Tenn. 2002). Although a register is very unlikely to be held liable for recording a document that is not authenticated as required by law (the reason the word "may" was used in the statute instead of "shall"), an unauthenticated "rerecording" should be refused if it is clearly not eligible for recording. The law provides for the recording of affidavits of scrivener's error as an alternative procedure when the maker of the original document is not available for a deed of correction: TCA 66-24-101(a) (27).

If the document being offered for re-recording already has the registration stamp of your office, or is a certified copy, then there would not be any point in recording again if there is not a change in the document being offered. So, these documents should be fairly easily detectable by reason of the register's stamp. You would not have to search the entire document as a practical matter to see if a change is made in the body of the instrument. If a stamp is found, the next step is to see if there is a new signature and acknowledgement. Such new signature and acknowledgement would likely be at the end of the document. If these cannot be found, it is my view that the document should be refused registration. If they are found, then it may be recorded.