



Kentucky Land Title Association
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Opinions
Kentucky Office of the Attorney General
700 Capital Avenue, Suite 118
Frankfort, Kentucky 40601

RE: Request for Opinion of the Attorney General as to
House Bill 422 – KRS 382.135

General Beshear:

Since the passage of House Bill 422 (“HB 422”) in the 2016 General Assembly, the Fayette County Clerk, members of the Kentucky Banker’s Association and members of the Kentucky Land Title Association have received numerous inquiries from lenders, practitioners, and other county clerks regarding the meaning and requirements of the “full name” provision enacted in the amendments to KRS 382.135.

HB 422, largely an act relating to code enforcement, also amends the deed recording provisions of KRS 382.135. Specifically, it adds to KRS 382.135 a requirement that every deed to real property shall contain “the *full name* [emphasis added] of the grantor and grantee.” However, the statute does not define “full name.”

Nor does any other section of the Kentucky Revised Statutes define the term “full name.” Secondary authorities offer some potential definitions:

The seventh edition of *Black’s Law Dictionary*, for example, defines “full name” as “[a] person’s first name, middle name (or middle initial), and surname.”

Kentucky’s Uniform Commercial Code provides that a financing statement sufficiently gives the “name” of an individual debtor if it contains the name indicated on the person’s Kentucky-issued driver’s license. See KRS 355.9-503(1)(d). And, at (e), a backup for individuals without a driver’s license, if the financing statement identified the debtor by his or her surname and first personal name.

Merriam-Webster.com does not define “full name,” but instead identifies a person’s “legal name” as the “name that is usually the name given at birth and recorded on the birth certificate but that may be a different name that is used by a person

consistently and independently or that has been declared the person's name by a court". See <http://www.merriam-webster.com>.

Secondary authorities may offer guidance but do not provide uniform clarity. Notably, the definition in *Merriam-Webster.com*, in which a person may designate a name that differs from his/her birth name, most closely aligns with the current practice in the Commonwealth.

In Kentucky, it has long been held that a deed only needs to identify the grantor and grantee. See, e.g., *Smith v. Vest*, Ky. App., 265 S.W.3d 246 (2007). Historically, Kentucky has not had a statutory approach to such designation. Practitioners have generally used the name that the grantee has designated as its name, and the grantor's name is the same as listed in its source of title (unless the grantor has changed its name, in which case an "also known as" or "formerly known as" designation is utilized). Throughout most of the Commonwealth's history, it was common practice to use the first and middle initials and surname of grantors and grantees in deeds. There are many citizens in Kentucky who have no middle names or who do not use their birth names on legal and governmental documents.

With the passage of HB 422, Kentucky has adopted a statutory approach to grantor and grantee name designation without providing any guidance. The lack of clarity as to the meaning of "full name" is a problem because KRS 382.135 is a recording statute related to property taxation. Subsection (5) of the statute provides that "[n]o county clerk or deputy clerk shall lodge for record, and no county clerk or deputy shall receive and permit to be lodged for record, any deed that does not comply with the provisions of this section." Accordingly, each county clerk may be forced to determine what the term "full name" means before recording deeds under the new statute. This conceivably could result in inconsistent recording requirements for deeds in each of Kentucky's 120 counties. Since Kentucky is a race-notice state, each grantee runs the risk of a deed's rejection and an intervening lien claimant or purchaser having priority over the grantee's title to the property.

Moreover, practically speaking, and depending on the definition of "full name" adopted, the amendment to KRS 382.135 could create issues of proof. For example, if a county clerk considers a grantee's full name to include his or her middle name, but the grantee in a particular transaction has no middle name, will the grantee have to submit an affidavit to that effect, or be compelled to supply driver's licenses, birth certificates, or marriage licenses? Without clarity and uniformity, the real estate market in Kentucky could come to a grinding halt as parties to real estate transactions lose faith in their ability to record deeds throughout the Commonwealth.

County clerks previously have not had any obligation to independently verify the information in deeds to certify conformity with the other requirements of KRS 382.135. For example, county clerks routinely accept deeds in which grantor and grantee designate their mailing addresses or the estimated fair cash value of the property in the event of a transfer under KRS 382.135(1)(d)2. County clerks do not independently verify such information.

HB 422's amendment to KRS 382.135 is effective July 15, 2016. We now urgently seek an Opinion of the Attorney General as to the definition of the "full name" requirement and the obligations of Kentucky's county clerks for purposes of that statute. Pending corrective legislation from the General Assembly, the Attorney General's opinion can provide clarity and uniformity in the interpretation of "full name" by county clerks across the Commonwealth. In this way, the Attorney General's opinion can prevent considerable confusion and uncertainty for county clerks, practitioners, lenders, and the public at large.

We strongly believe that there should be uniformity throughout the Commonwealth in how to comply with the new provision of KRS 382.135. Therefore, we urge you to opine that "full name" for individuals would be satisfied under KRS 382.135 if the deed designates the grantor and grantee with (a) a surname and (b) a first name, middle name, no middle name, initials for either or both the first and middle name, or any combination thereof. Further, we urge you to opine that county clerks do not need to independently verify the full names of grantors and grantees designated in the deed.

Sincerely,

KENTUCKY LAND TITLE ASSOCIATION



P. Branden Gross
Legislative Chair

FAYETTE COUNTY CLERK



Don Blevins, Jr.
County Clerk

KENTUCKY BANKERS ASSOCIATION



Debra Stamper
EVP / General Counsel