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Honorable Wayland Cooley
Tax Assessor
Madison County Courthouse
Huntsville, Alabama 35801

Tax Assessor - Ad Valorem
Taxes - Deeds - Tax Classifi-
cation

Effective date of deed presumed to be date of execution. If it appears that no delivery took place on date of execution, fact question as to effective date arises, and tax assessor has authority to make inquiry to determine effective date.

Dear Mr. Cooley:

You have requested of this office an opinion respecting the proper classification of real property for ad valorem tax purposes, when there is a transfer of title of said property near the law day, October 1, of the given tax year. More specifically, you have submitted a copy of a deed showing, as the date signed by the grantor, a day just before the close of a given tax year, and showing an acknowledgment with a date just after the beginning of the succeeding tax year, and a recording date several days later than the date on the acknowledgment.

I have paraphrased the three questions you have asked as follows:

1. Is the date of execution of the deed used as the date of the transfer of title?

2. If there is a conflict between dates shown on the instrument, as in the example submitted, what is the proper date to use?

3. What is the effect of the date of recording?

Ad valorem taxes in Alabama become due and payable on October 1 of the tax year. Section 40-11-4, Code of Alabama 1975. It is the duty of every person to render to the tax assessor, under oath, a list of all property of which he is the owner, or has any interest, as of October 1 of each year. Section 40-7-4, Code of Alabama 1975. Accordingly, it is the ownership status as of October 1 of the tax year that controls the classification of the property, eligibility for homestead exemption, and so forth. Delivery of a deed is essential to its validity as a conveyance, and if it is subject to recall by the grantor before delivery to the grantee, there is no effectual delivery by the grantor. Chandler v. Chandler, 409 So.2d 780 (1981); Culver v. Carroll, 175 Ala. 469, 57 So. 767 (1911). A deed takes effect upon the day of its delivery. In the absence of proof it must be presumed to have been delivered on the day of its date. Carroll v. Carroll, 183 So. 857 (1938).

In view of the foregoing the answers to your questions are as follows:

1. Absent some showing to the contrary, the date of execution shown on the deed should be presumed to be the date of delivery, and thus the date that the deed is effective.

2. If there is some conflict between the dates showing on the face of the deed, as for instance the date of execution and the date of acknowledgment, or some other evidence indicating that the deed was not delivered on the date shown as its date of execution, a fact question arises as to the actual date of delivery and thus the effective date of the transfer.

3. The date of recording is merely evidence indicating that title had been transferred at some time prior to the date of recording, it being incumbent upon the grantee to secure recording of the deed.

To summarize, the effective date of a deed is the date of its delivery, which may or may not be the date of its execution, acknowledgment or recordation. In the event the

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date of transfer of title becomes important for the purposes of your office, you have the authority, and indeed the responsibility, to inquire into the factual circumstances to determine when the transfer actually took place.

I trust that the foregoing answers your questions. If this office can be of further assistance, please let us know.

Yours very truly,

CHARLES A. GRADDICK
Attorney General

By-


PHILIP C. DAVIS
Assistant Attorney General

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