



Policy Clarification 2022-07-02

Title: Unrecorded Deed

Date: July 28, 2022

From: Erin Kelley, Senior Manager

Program(s) Impacted: Elderly & Disabled Medical Assistance Programs

The purpose of this document is to provide guidance on the resource treatment of real estate where there has been a transfer or attempted transfer of ownership from one party to another via an unrecorded deed.

The following Medical KEESM provision states the basic policy:

5200 General Guidelines – *“(6) Ownership of property is determined by legal title.”*

Since real estate is titled property, legal ownership of the property is attributed to whoever is named on the deed to the property. Assuming the deed was properly executed (signed and notarized), whoever is named on the title is the legal owner of the property. However, a question has arisen as to whether or not the real estate deed must be recorded in the county real estate office to be considered valid. The answer is “No”, a properly executed deed does not have to be recorded in the county office to be valid.

To be valid, a deed must be signed, dated, and notarized. In addition, for the deed to be effective against the grantor (the person giving the interest in the property) by the grantee (the person receiving the interest in the property), the deed must be delivered to and accepted by the grantee. Otherwise, transfer of legal title to the property has not occurred. When an applicant or recipient reports a transfer of real estate via an unrecorded deed, a copy of the deed must be provided. Additionally, the deed must be delivered and accepted during the lifetime of both the grantor and the grantee, otherwise the property would be considered part of the decedent’s estate.

Note: The purpose of recording a deed in the county real estate office is to put the world on notice as to who legally owns the property. However, as indicated above, it is not required to effectuate legal transfer of ownership of the property from one party to another where the deed has been delivered to and accepted by the new owner. Consider the following situations:

1. Father executes a quit claim deed of farm ground he owns to his son. The deed is properly signed, dated, and notarized. The father then delivers the deed to his son who accepts and then puts the deed in his safe deposit box at the bank but does not record the deed at the county real estate office. Even though unrecorded, the deed is valid between the parties and effectuates the transfer of the property from father to son effective with the date of delivery and acceptance of the deed.

Note: Since the deed has not been recorded with the county office, the father will continue to be the owner of record with the county and thus responsible for taxes assessed on the property. The county tax assessor, along with the rest of the world, is unaware that the property has been transferred to a new owner. Who actually pays those taxes will have to be agreed upon by the parties involved (the owner of record (grantor) and the deed holder (grantee)). However, who pays the taxes does not determine who owns the property.

2. Mother and father execute a quit claim deed of their house to their three (3) children. The deed is properly signed, dated, and notarized. However, the couple then files the deed in their personal papers at home without ever telling their children (or recording the deed at the county office). Since the deed was never delivered to or accepted by the children, the deed is not valid. Mother and father remain the legal owner of the property.

If months or years later, the couple delivers the deed to the children and they accept, the deed then becomes valid at that point in time. Ownership has effectively transferred from parents to children, even if the children fail to record the deed at the county office.

Even though a properly executed unrecorded deed that has been delivered and accepted by the grantee is valid, the county real estate office website will continue to show the property grantor as the current owner. When that occurs, eligibility staff should verify that the deed presented as verification is valid (signed, dated, notarized) and has been delivered and accepted by the grantee. Self-attestation of delivery and acceptance of the deed by either the grantor(s) or the grantee(s) is sufficient verification. Note that this situation may also occur where the property has only recently been transferred and the new deed simply hasn't been recorded yet, or the deed has been recorded but doesn't yet appear on the county website due to the time it takes to process and post the change.

As with any transfer of property involving a long term care applicant or recipient, the transaction must be scrutinized to determine if it was appropriate or inappropriate. For purposes of this policy clarification, the date of transfer for a valid unrecorded deed is the date of delivery and acceptance by the grantee. As indicated above, if the unrecorded deed has not been delivered and accepted by the grantee, a transfer has not occurred. Consider the following situations:

1. Father properly executes an unrecorded deed transferring ownership of his home from himself to his daughter for love and affection. The deed is delivered to and accepted by the daughter. Since this is a gift without adequate consideration, an inappropriate transfer subject to penalty has occurred effective with the date the deed was delivered and accepted by the daughter.

See Medical KEESM 5721 (2)(b) & (d) and (4) for possible transfer of property penalty exemptions when a parent in long term care transfers a home to a child either outright or to a trust.

2. Parents properly execute a quit claim deed for their farm ground to their eight (8) children. They do not record the deed nor deliver it to the children for acceptance. Since the deed is invalid, a transfer has not occurred. When the deed is submitted by the long term care applicant to eligibility staff as proof that they no longer own the property, verification is provided that the deed was never delivered nor accepted by the children. The deed is therefore disregarded with the parents verified as the current owners of record via the county real estate office website.

Note: If an individual inherits real estate via will, ownership does not transfer from the deceased to the beneficiary until the property deed has been modified to reflect the new owner(s). This responsibility usually falls on the executor of the decedent's estate or a representative from the probate court. In these instances, ownership has not been transferred to the heir until the new deed has been properly executed.

For questions or concerns related to this document, please contact the KDHE Medical Policy Staff at KDHE.MedicaidEligibilityPolicy@ks.gov.

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Questions regarding any KEES issues are directed to the KEES Help Desk at KEES.HelpDesk@ks.gov.