

00-108

TAXATION: REAL PROPERTY TAX.

WILLS AND DECEDENTS' ESTATES: WILLS.

Commissioner of revenue has no authority to effect change in real property ownership on land books based on recorded deed of gift, with attached holographic will that has not been recorded or probated.

The Honorable Susan P. Ford
Commissioner of the Revenue for Powhatan County
October 31, 2001

You ask whether a commissioner of the revenue may make changes on the land book based on a recorded deed of gift, with an attached holographic will, which has not been recorded or probated.

You relate that real property taxes attributable to certain real property are currently charged to a particular owner of record. You also relate that a recorded deed purporting to be a deed of gift conveys the real property from certain grantors who are not the owners of record. You further relate that attached to this deed is a document purporting to be a holographic will¹ in which the owner of record conveys the property to one of the grantors in the deed of gift. You state that there is no reference to a will book where such will may be recorded nor has such will been probated. You inquire whether the documents submitted effect a transfer of ownership of the property so that the land books may be changed to reflect such transfer.

Section 58.1-3281 of the *Code of Virginia* requires the commissioner of the revenue to ascertain "the person to whom [real property] is chargeable with taxes," and provides further that "the owner ... shall be assessed for the taxes." Section 58.1-3312 provides that changes that occur in a city or county are to be entered when the commissioner of the revenue makes out his land book. Section 58.1-3313 provides that "land which has been correctly charged to one person shall not afterwards be charged to another without evidence of record that such charge is proper."

The Attorney General previously has concluded that § 58.1-3313 requires evidence of recorded documents before the commissioner of the revenue may change the real estate records when land has been correctly charged.² Thus, a commissioner of the revenue has authority to change the name of

the record owners accordingly upon his determination that the evidence of record is sufficient.

A prior opinion of the Attorney General concludes that a change to the land books may be entered based on probate records.³ In the instant case, a recorded deed has been presented in which the grantors are not the owners of record and to which is attached a holographic will purporting to convey the property in issue. This will, however, has not been recorded or probated.⁴ It is, therefore, my opinion that there is not sufficient evidence of record to establish a transfer of ownership of the property.

Accordingly, based on the limited facts presented, I am of the opinion that there is not sufficient evidence of record to effect a change in ownership of the property on the land books.⁵

¹"No will shall be valid unless it be in writing and signed by the testator, or by some other person in his presence and by his direction, in such manner as to make it manifest that the name is intended as a signature; and moreover, unless it be wholly in the handwriting of the testator, the signature shall be made or the will acknowledged by him in the presence of at least two competent witnesses, present at the same time; and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary. If the will be wholly in the handwriting of the testator that fact shall be proved by at least two disinterested witnesses." Va. Code Ann. § 64.1-49 (Michie Repl. Vol. 1995).

²1985-1986 Op. Va. Att'y Gen. 298 (noting situations [not relevant here] in which commissioner of revenue may make changes to land records without prior recordation in clerk's office).

³See 1986-1987 Op. Va. Att'y Gen. 302, 303. *But see* 1985-1986 Op. Va. Att'y Gen., *supra*, at 298 (concluding that change may be made to name of surviving spouse regarding property held in tenancy by entirety without recording additional document, so long as there is presentation of adequate proof of death of nonsurviving spouse).

⁴See 1982-1983 Op. Va. Att'y Gen. 766, 769 (noting that order of probate establishes fact that instrument is or is not testamentary in character).

⁵*Compare* 1973-1974 Op. Va. Att'y Gen. 62, 63 (concluding that quitclaim deed executed and recorded by person other than record owner is not sufficient basis for commissioner of revenue to change name of record owner for purpose of assessing real estate taxes).

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