



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

ANDY BESHEAR
ATTORNEY GENERAL

OAG 18-002

CAPITOL BUILDING, SUITE 118
700 CAPITOL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

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Subject: Whether the "consideration statement" requirement for deeds is enforceable.

Requested by: Bob Branstetter
Warren County Property Valuation Administrator

Written by: Marc G. Farris

Syllabus: Kentucky law prohibits "willfully and fraudulently" making a false statement in a deed as to the consideration paid for property, and provides that doing so is a Class D felony.

Statutes construed: KRS 382.135; KRS 382.990

Opinion of the Attorney General

You have asked about the enforceability of the statutory requirement that deeds accurately recite the consideration paid for property. We understand from your letter that certain grantees have claimed that the consideration reflected on the deed is greater than the actual consideration paid for the property. As explained more fully below, Kentucky law prohibits "willfully and fraudulently" making a false statement as to the consideration of property, and provides that doing so is a Class D felony.

KRS 382.135(1) sets forth the consideration requirement for deeds:

In addition to any other requirement imposed by law, a deed to real property shall contain the following:

(c) A statement of the full consideration;

[...]

(e) 1. In the case of a transfer other than by gift, or with nominal or no consideration a sworn, notarized certificate signed by the grantor or his or her agent and the grantee or his or her agent, or the parent or guardian of a person under eighteen (18) years old, that the consideration reflected in the deed is the full consideration paid for the property; or

2. In the case of a transfer either by gift or with nominal or no consideration, a sworn, notarized certificate signed by the grantor or his or her agent and the grantee or his or her agent, or the parent or guardian of a person under eighteen (18) years old, stating that the transfer is by gift and setting forth the estimated fair cash value of the property.

KRS 382.990(8) provides that “[a]ny person who willfully and fraudulently gives a false statement as to the full actual consideration of property or the full estimated value under KRS 382.135, shall be guilty of a Class D felony.” Class D felonies are punishable by up to five years in prison, KRS 532.060(2)(d), and a fine of up to \$10,000, KRS 534.030(1).

In short, the General Assembly has made accurately reciting the consideration paid a legal requirement, and willfully and fraudulently attesting to a false consideration statement in the deed is a felony. The Commonwealth’s Attorney for the relevant circuit has general authority to bring felony charges. *See generally* KRS 15.725(1). While we are not aware of any convictions for violating KRS 382.990(8), we see no reason why the law would not be enforceable. We note that courts have relied on KRS 382.990(8) in civil cases. *See, e.g., Mangrum v. Davidson*, No. 2005-CA-000836-MR, 2006 WL 1045715, at *3 (Ky. App. Mar. 31, 2006) (holding that lower court correctly applied unclean hands doctrine against individual who violated KRS 382.990(8)); *In re Addington*, No. AP 14-1008, 2015 WL 3404505, at *5 (Bankr. E.D. Ky. May 27, 2015) (observing that “[t]he importance of accuracy when disclosing value is evidenced by the significant punishment imposed for falsification of the value in the deed.”).

We cannot, however, provide advice as to how your office should respond to those who violate this requirement, and therefore cannot answer your question as to whether your office should "hold [y]our ground" with respect to those individuals. We note that neither the legislature nor the courts have addressed how an assessor should use the consideration amount in determining the fair cash value of the deeded property. *See generally Dean v. Com. ex rel. Revenue Cabinet*, 967 S.2d 594 (Ky. App. 1998) (noting that "the Court [has] held that the tax assessor does not need to be specifically instructed on what method to use"); OAG 77-185 ("One assessor might use one method and another a different method in arriving at the same result. We know of no law which restricts [the assessor] to one specific method or limits him in his search for advice and counsel. Nor do we know of any law which gives the taxpayer the right to object to the method used so long as the assessment is fair and equitable.") (quoting *Borders v. Cain*, 252 S.W.2d 903, 905 (Ky. 1952)).

Sincerely,

ANDY BESHEAR
ATTORNEY GENERAL

A handwritten signature in dark ink, appearing to read "Marc G. Farris", written in a cursive style.

Marc G. Farris
Assistant Attorney General