

OPINION NO. 72-075**Syllabus:**

1. Section 1777.02, Revised Code, applies to both mortgage deeds and 99-year leases.
2. "Any conveyance of real property to or from any such partnership" as used in Section 1777.02, Revised Code, includes all conveyances which are required to be recorded by Section 317.08, Revised Code, by the county recorder, and all conveyances which require a transfer by the county auditor, under Section 319.20, Revised Code.

To: Neil M. Laughlin, Pros. Atty., Licking County, Newark, Ohio
By: William J. Brown, Attorney General, August 24, 1972

Your request for my opinion reads as follows:

"Reference being made to the aforesaid Amended House Bill No. 438, I have been requested by the Recorder of Licking County, Ohio, for your opinion as to the interpretation of Sec. 1777.02.

"The questions raised by the Recorder were as follows:

"1. Does Sec. 1777.02 apply to mortgage deeds?

"2. Does Sec. 1777.02 apply as to a 99-year lease?

"3. What is meant by the terminology contained in Sec. 1777.02 "any conveyance of real property to or from any such partnership"?

"In other words the County Recorder is requesting guidelines relative to this section of the Revised Code as to what instruments must have the endorsement of the Clerk of the Court of Common Pleas?"

Section 1777.02, Revised Code, reads in part as follows:

"Except as provided in this section, every partnership transacting business in this state under a fictitious name, or under a designation not showing the names of the persons interested as partners therein, must file, with the clerk of the court of common pleas of the county in which its principal office or place of business

is situated and of each county in which it owns real property, a certificate to be indexed by him, stating the names in full of all the members of the partnership and their places of residence. The county auditor shall not transfer and the county recorder shall not record any conveyance of real property to or from any such partnership unless such instrument is indorsed by the clerk of the court of common pleas, showing that such partnership has filed the certificate required by this section. (Emphasis added.)

Chapter 1777, Revised Code, is entitled Partnership--Frauds; Fictitious Names. Prior to this amendment of Section 1777.02, which is shown above by underlining, a partnership transacting business under a fictitious name was required to file a certificate with the clerk of court of the county where its principal place of business was located showing the names of all partners. Section 1777.03, Revised Code, requires that a certificate be refiled on every change of membership in the partnership. Section 1777.04, Revised Code, disables such a partnership from being a party to litigation in the absence of a properly filed membership certificate, and Section 1777.99, Revised Code, provides minor criminal penalties for noncompliance.

According to the report of the Legislative Service Commission for Amended House Bill No. 438, the amending language was offered to facilitate title searches in cases where one of the parties to a conveyance is a partnership doing business under a fictitious name. It was intended that the filing requirement be extended to every county in which the partnership owns real property; and to encourage compliance the amendment requires, and I quote from the Legislative Service Commission report:

"* * * that the county auditor shall not transfer, nor the county recorder record, any conveyance to or from a partnership whose name does not indicate all the partners therein, unless the deed bears an endorsement by the clerk of the common pleas court that the required certificate has been filed."

The amending language seems more than appropriate to accomplish the above described purpose. The first phrase added to Section 1777.02 clearly states that the certificate shall be filed not only in the county in which the principal office is situated but also in each county wherein the partnership owns real property. The second addition to the Section imposes a duty on either or both of the two county officials who are involved in land recording or transfers to participate in a partnership transfer only when the certificate required by this Section is on file with the clerk of court, and the clerk so endorses on the transferring instrument. It seems clear, knowing the legislative purpose, that the word "and" as used in the amending language, i.e., "the county auditor shall not transfer and the county recorder shall not record", is used disjunctively. Section 1.02 (H), Revised Code, states that "'[a]nd' may be read 'or', and 'or' may be read 'and', if the sense requires it." Hence, the amending language imposes duties on the auditor and/or the recorder concerning conveyances covered by the new Section 1777.02, Revised Code.

The use of the word "conveyance" of real property in this Section is also consistent with the remedial purposes of the enactment.

Conveyance is defined in Black's Law Dictionary (4th ed. 1951), as follows:

"Conveyance: In real property law. In the strict legal sense, a transfer of legal title to land. In the popular sense, and as generally used by lawyers, it denotes any transfer of title, legal or equitable. Chupco v. Chapman, 76 Okl. 201, 170 P. 259, 266. The transfer of the title of land from one person or class of persons to another. Klein v. McNamara, 54 Miss. 105; Alexander v. State, 28 Tex. App. 186, 12 S.W. 595; In re Loes' Will, 55 N.Y.S. 2d 723, 726. An instrument in writing under seal, (anciently termed an 'assurance,') by which some estate or interest in lands is transferred from one person to another; such as a deed, mortgage, etc. 2 Bl. Comm. 293, 295, 309.

"Conveyance includes every instrument in writing by which any estate or interest in real estate is created, aliened, mortgaged, or assigned, or by which the title to any real estate may be affected in law or equity; except last wills and testaments, leases for a term not exceeding three years, and executory contracts for the sale or purchase of lands. Stearns Lighting & Power Co. v. Central Trust Co. C.C.A. Mich. 223 F. 962, Shraiberg v. Hanson, 183 Minn. 80, 163 N.W. 1032, 1033."

Following the usual definition of the word, a conveyance would include both mortgage deeds and 99-year leases. It seems to be broad enough term, as used herein, to include any instrument that is entitled to recording under Section 317.08, Revised Code. Also, it would include any instrument involving a transfer on the records of the county auditor. Section 319.20, Revised Code. Interpreted in this manner, Section 1777.02 fulfills its purpose to facilitate title searches where one of the parties to a conveyance is a partnership using a fictitious name.

In specific answer to your question it is my opinion, and you are so advised, that:

1. Section 1777.02, Revised Code, applies to both mortgage deeds and 99-year leases.
2. "Any conveyance of real property to or from any such partnership" as used in Section 1777.02, Revised Code, includes all conveyances which are required to be recorded by Section 317.08, Revised Code, by the county recorder, and all conveyances which require a transfer by the county auditor, under Section 319.20, Revised Code.