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ACKNOWLEDGMENT: Life Lease.

RECORDS AND RECORDING: Life Lease.

To be recorded, an instrument creating a life lease must be acknowledged.

Opinion No. 4853

February 13, 1975.

Ms. Linda Lee Morrison
Register of Deeds
Branch County
Coldwater, Michigan

You have requested my opinion as to whether an instrument creating a "life lease" must be "notarized." By notarization I assume that you are referring to the requirement that documents be acknowledged pursuant to R.S. 1846, c. 65, § 8; MCLA 565.8; MSA 26.527 and that you are primarily interested in knowing whether such documents may be accepted for recordation. In this regard it should be noted that an "acknowledgment" is a formal declaration before an authorized official by a person who has executed an instrument as his free act and deed. Black's Law Dictionary, Revised Fourth Edition, p 39.

A "life lease" is a possessory interest in real estate the duration of which is limited to the life of the party holding the lease or the life of some person other than the lessee; this interest constitutes a freehold life estate in real property. See 28 Am Jur 2d, Estates, § 861, p 151.

MCLA 565.35; MSA 26.552, provides:

"The term 'conveyance,' as used in this chapter, shall be construed to embrace 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 wills, leases for a term not exceeding 3 years, and executory contracts for the sale or purchase of lands." (emphasis added)

It is therefore clear that an instrument creating or transferring a "life lease" is a conveyance entitled to recordation within the compass of MCLA 565.491; MSA 26.761.

Concerning the effect of an unrecorded conveyance, MCLA 565.29; MSA 26.547, states in part:

"Every conveyance of real estate within the state hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded. * * *"

The above statute, therefore, does not affect the validity of an unrecorded "life lease" as between the lessor and the lessee, nor as to any subsequent purchaser of the lessor who has actual notice of the unrecorded lease. Pursuant to MCLA 565.29; MSA 26.547, *supra*, a prior unrecorded conveyance will be void only as against any subsequent purchaser in good faith and for a valuable consideration whose conveyance has been duly recorded.

Thus, since a "life lease" creates an estate in real property, the instrument is entitled to be recorded if it meets all the requirements of the recording statute. The requirements for the recordation of instruments are set forth in 1937 PA 103, § 1, MCLA 565.201; MSA 26.1221. As stated therein, an instrument must be acknowledged if it is to be accepted for recording. Therefore, it is my opinion that a "life lease" document must be acknowledged in order to be recorded.

FRANK J. KELLEY,
Attorney General.

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PHYSICIANS

HOSPITALS

DRUG ABUSE: Treatment of drug abusers.

DRUG ABUSE: Confidentiality of drug abuse program information.

By statute in Michigan, physicians need not treat drug abusers for drug related illness.

While Michigan law does not require doctors or hospitals to treat drug abusers for their drug related diseases, federal law, with respect to hospitals, commands this action in emergency circumstances and a hospital's failure to meet the aforesaid federal mandate could place its federal aid in jeopardy.

The Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 allows the Secretary of Health, Education and Welfare and the Attorney General of the United States to accord confidentiality to drug abuse programs they deem to be research and rules have been adopted pursuant thereto.

The Federal Drug Abuse Office and Treatment Act of 1972 makes records of drug abuse prevention functions conducted, funded or assisted by the federal government confidential, subject only to (1) patient consent, (2) certain administrative and medical limitations or (3) an order by a competent United States District Court authorizing disclosure with appropriate safeguards.

Under state law, confidentiality attaches to any communication concerning the identity of patients or research subjects involved in drug abuse.

Opinion No. 4797

February 26, 1975.

J. Irvin Nichols, Administrator
Office of Substance Abuse Services
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I have been requested to respond to questions dealing with two major issues: (1) Whether medical personnel are legally required to treat minors