

## TRUSTEE'S DEED

THIS DEED made this the 1st day of February, 2006, between the Bankruptcy Estate of PATRICIA ANN PAYNE, by and through its duly appointed Trustee in Bankruptcy, André M. Toffel, in his capacity as Trustee and not individually, in case number **2004-08613-BGC-7**, United States Bankruptcy Court, Northern District of Alabama, Southern Division (hereinafter referred to as "Grantor") and Denny M. Looney, III and Heather A. Lougher, (hereinafter referred to as "Grantee"), pursuant to and authorized by Order of the said Bankruptcy Court dated January 25, 2006, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A".

## WITNESSETH

WHEREAS, on October 1, 2004, a voluntary petition for relief under Chapter 13 of the Bankruptcy Code was filed by the debtor, PATRICIA ANN PAYNE, in the United States Bankruptcy Court for the Northern District of Alabama, Southern Division, case number **2004-08613-BGC-7**. Subsequent thereto, PATRICIA ANN PAYNE converted her case to a Chapter 7 bankruptcy.

WHEREAS, on or about November 4, 2004, Grantor was duly appointed as Trustee of said estate, that he qualified as such Trustee and entered into proper bond, and that Grantor has continued to act and is now acting and serving as such Trustee, and,

WHEREAS, the Bankruptcy Clerk of the Court issued notice to all parties in said bankruptcy case on December 29, 2005, pursuant to the Grantor's Motion for Authority to Sell Property of the Estate by Private Sale, Free and Clear of All Liens, Interests or Other Encumbrances and the Bankruptcy Court having issued its Order Authorizing the said Sale, said Order being attached hereto as Exhibit "A".

NOW THEREFORE, by virtue of the power and authority granted the Grantor to sell property of the Bankruptcy Estate pursuant to the provisions of 11 U.S.C. Section 363, and in consideration of the sum of SEVENTY THREE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$73,500.00) paid to Grantor in hand by the Grantee, receipt of which is hereby acknowledged, the Grantor does hereby transfer unto the said Grantee, all of the Grantor's right, title and interest, including any rights of redemption, in and to the following described real property located in Shelby County, Alabama, to-wit:

Begin at a Point 456.03 Feet North and 477.1 Feet West of the Center Stake of Section 5, Township 22 South, Range 3 West; from above point run South 32 Degrees 10 minutes West 143.2 Feet; Thence North 57 Degrees 50 Minutes West 105.0 feet; Thence North 32 Degrees 10 Minutes East 143.2 Feet; Thence South 57 Degrees 50 Minutes East, 105.05 Feet to the Point of Beginning.

together with all of the appurtenances, fixtures and improvements thereon and also all of the estate which the said Grantor had in said premises at the date of the present conveyance. This property is not the homestead of the Debtor PATRICIA ANN PAYNE.

This conveyance is made free and clear of all liens and encumbrances as authorized by that certain Order of the United States Bankruptcy Court dated January 25, 2006, and is made subject to



all restrictions and exceptions of record.

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Shelby Cnty Judge of Probate, AL  
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TO HAVE AND TO HOLD unto the said Denny M. Looney, III, and Heather A. Lougher forever, said real property being conveyed "as is" and Grantor gives no guarantee or warranty regarding the condition, fitness, or environmental status of the real property conveyed herein.

IN WITNESS WHEREOF, the Grantor, in his representative capacity as Trustee in Bankruptcy and not individually, has hereunto set his hand and seal the day and year first above written.

THE BANKRUPTCY ESTATE OF  
PATRICIA ANN PAYNE

By: Andre M. Toffel as Trustee  
Andre' M. Toffel, as ~~and~~ only as Trustee  
in Bankruptcy and not individually


STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, Ferris S. Ritchey III a Notary Public in and for said County, in said State, hereby certify that Andre' M. Toffel, as Trustee in Bankruptcy and not individually, whose name as Trustee in Bankruptcy of PATRICIA ANN PAYNE, and not individually, signed the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of the said instrument, he, in his capacity as such Trustee in Bankruptcy and not individually, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 15<sup>th</sup> day of February, 2006.

J. R. L. 2  
NOTARY PUBLIC  
My commission expires 4/15/09

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

  
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Shelby Cnty Judge of Probate, AL  
02/06/2006 02:14:55PM FILED/CERT

**IN RE:**

**PATRICIA ANN PAYNE,**

**DEBTOR.**

**CASE NO.: 04-08613-BGC-7**

**CHAPTER 7**

**ORDER**

On January 25, 2006, the Trustee's Notice of Intent to Sell and Motion to Sell, Real Property By Private Sale Free and Clear of All Liens, Interests or Other Encumbrances (hereinafter "the Motion") came before this Court. The Attorney for the Trustee, Harrison Willis, attended this hearing. Proper notice of the hearing having been given, upon good cause shown, no opposition thereto, and this Court having reviewed the proceeding it had before it at the hearing on the Motion, it is:

**ORDERED, ADJUDGED AND DECREED** that the Chapter Seven Trustee's Motion is hereby GRANTED, and the Trustee is hereby authorized to sign all documents necessary to effectuate the sale.

Ordered this the 25th day of January, 2006.

/s/Benjamin Cohen


BENJAMIN COHEN

United States Bankruptcy Judge

This order prepared by:  
E.B. Harrison Willis, Esquire  
TOFFEL & ALTMANN, P.C.  
1929 3<sup>rd</sup> Ave North  
Fourth Floor Farley Building  
Birmingham, Alabama 35203  
(205) 252-7115



**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

  
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Shelby Cnty Judge of Probate, AL  
02/06/2006 02:14:55PM FILED/CERT

IN RE:

PATRICIA ANN PAYNE,

DEBTOR.

CASE NO.: 04-08613-BGC-7

CHAPTER 7

**NOTICE OF INTENT TO SELL AND MOTION TO SELL, REAL PROPERTY  
BY PRIVATE SALE FREE AND CLEAR OF ALL LIENS, INTERESTS OR  
OTHER ENCUMBRANCES**

COMES NOW the Trustee, André M. Toffel, by and through his attorney, and gives notice, pursuant to the Federal Rules of Bankruptcy Procedure 2002 and 6004, of his intent to sell certain real property free and clear of liens, interests and/or other encumbrances pursuant to Title 11 United States Code Section 363(f) as described below, and moves this Honorable Court for an Order authorizing the Trustee to sell the real property and as grounds for said motion, states the following:

1. André M. Toffel is the duly appointed Trustee in the above-styled case.
2. The Trustee proposes to sell all of the estate's right, title, and interest in the real property which is more specifically described in Paragraph 6 of this Motion and hereinafter known at "Parcel 2."
3. On October 19, 2005, a Motion to Sell Real Property By Private Sale Free and Clear of All Liens, Interests and Other Encumbrances was filed by the Chapter 7 Trustee. After Notice and Hearing, the court entered an order on November 10, 2005 authorizing the Trustee to conduct the sale and sign all necessary paperwork to effectuate such. After the order was entered granting the Motion to Sell, the Lender, who was

financing the purchaser, discovered the legal description of the real property contemplated to be sold in the prior October 19, 2005 Motion was incorrect.

4. In the prior October 19, 2005 Motion, the real property that was thought to be titled in the name of Patricia Ann Payne (hereinafter the "Debtor") was described as follows:

A House and Lot at 3760 Highway 22, Montevallo, AL 35115, More Particularly Described As: Begin at a Point 503.7 Feet North and 497.5 Feet West of the Center Stake of Section 5, Township 22 South, Range 3 West; Thence Run North 32 Degrees 10 Minutes East, 164.00 Feet; Thence North 57 Degrees 50 Minutes West, 89.2 Feet; Thence South 32 Degrees 10 Minutes West, 164.0 Feet; Thence South 57 Degrees 50 Minutes East, 89.2 Feet to the Point of Beginning, Shelby County, Alabama.

Please see a copy of the original title binder that is attached hereto as Exhibit "A". The prior parcel will be hereinafter referred to as "Parcel 1."

5. Because of the discrepancy of the legal description of the real estate, a survey was performed by Olden Webb on November 22, 2005. Based on the survey the legal description of the real property that is to be sold by the Trustee to the purchaser by private sale is as follows:

A parcel of land in Shelby County, Alabama more particularly described as:

Begin at a Point 456.03 Feet North and 477.1 Feet West of the Center Stake of Section 5, Township 22 South, Range 3 West; from above point run South 32 Degrees 10 minutes West 143.2 Feet; Thence North 57 Degrees 50 Minutes West 105.0 feet; Thence North 32 Degrees 10 Minutes East 143.2 Feet; Thence South 57 Degrees 50 Minutes East, 105.05 Feet to the Point of Beginning.

Please see attached hereto a copy of the Webb's Report which is attached hereto is Exhibit "B." The above listed real estate will be hereinafter referred to as "Parcel 2."



6. Based on the corrected legal description of the property of the estate, the Trustee brings this Motion to Sell on the above listed property in Paragraph 5 or “Parcel 2.”

7. To adequately resolve any questions as to the legal description and to preserve the rights and interests of all parties, a brief history of the property shows that the “Parcel 1” has never been owned by the Debtor. However through a series of apparent title errors, snafus, or discrepancies, it appears that the Debtor’s interest in clearly rests within “Parcel 2.” The following analysis is to show unto this Court and other parties in interest that the estate’s interest is in “Parcel 2.” The relevant title history for “Parcel 1” is attached to as Exhibit “C.” The relevant title history for “Parcel 2” is attached hereto as Exhibit “D.” Neither “Parcel 1” nor “Parcel 2” is the homestead of the Debtor. The below-listed table shows the title snafus, discrepancies or errors that have occurred that relate to the questioned parcels. The following shows that the estate has an interest in “Parcel 2”:

<p><b><u>“Parcel 1” – Legal Description and Transactions</u></b> A House and Lot at 3760 Highway 22, Montevallo, AL 35115, More Particularly Described As: Begin at a Point 503.7 Feet North and 497.5 Feet West of the Center Stake of Section 5, Township 22 South, Range 3 West; Thence Run North 32 Degrees 10 Minutes East, 164.00 Feet; Thence North 57 Degrees 50 Minutes West, 89.2 Feet; Thence South 32 Degrees 10 Minutes West, 164.0 Feet; Thence South 57 Degrees 50 Minutes East, 89.2 Feet to the Point of Beginning, Shelby County, Alabama.</p>	<p><b><u>“Parcel 2”- Legal Description and Transactions</u></b> A parcel of land in Shelby County, Alabama more particularly described as: Begin at a Point 456.03 Feet North and 477.1 Feet West of the Center Stake of Section 5, Township 22 South, Range 3 West; from above point run South 32 Degrees 10 minutes West 143.2 Feet; Thence North 57 Degrees 50 Minutes West 105.0 feet; Thence North 32 Degrees 10 Minutes East 143.2 Feet; Thence South 57 Degrees 50 Minutes East, 105.05 Feet to the Point of Beginning.</p>
<p><i>In the Probate Court of Shelby County, Alabama, on or around September 3, 1960, T.H. Brantley and Lucille Brantley</i></p>	<p><i>In the Probate Court of Shelby County, Alabama, on or around June 29, 1962, T.H. Brantley and Lucille Brantley</i></p>



<p><i>conveyed to James R. Harris and Mary Harris "Parcel 1." Deed Book 211, Page 393-394.</i></p>	<p><i>conveyed to Kenneth A. Howell and Hazel B. Howell "Parcel 2." Deed Book 221, Page 163.</i></p>
<p><i>In the Probate Court of Shelby County, Alabama, on or around April 17, 1996, Mary Harris, an unmarried widow conveyed to Kenneth A. Howell and Hazel B. Howell "Parcel 1." Instrument Number 1996-12522. The Deed provided that <b>"the parties are exchanging deeds to reflect the actual property that each is in possession of, and to exchange the properties described in Deed Book 211, Page 393, and Deed Book 221, Page 163, in the Probate Office of Shelby County, Alabama."</b> It appears that the Howells and Harris executed this deed to clarify any title discrepancies that existed in 1996. The result shows that Harris was given title the "Parcel 2" and the Howells were given title to "Parcel 1."</i></p>	<p><i>In the Probate Court of Shelby County, Alabama, on or around April 17, 1996, Mary Harris, an unmarried widow conveyed to Kenneth A. Howell and Hazel B. Howell "Parcel 1." Instrument Number 1996-12522. The Deed provided that <b>"the parties are exchanging deeds to reflect the actual property that each is in possession of, and to exchange the properties described in Deed Book 211, Page 393, and Deed Book 221, Page 163, in the Probate Office of Shelby County, Alabama."</b> It appears that the Howells and Harris executed this deed to clarify any title discrepancies that existed in 1996. The result shows that Harris was given title the "Parcel 2" and the Howells were given title to "Parcel 1."</i></p>
<p><i>In the Probate Court of Shelby County, Alabama, on or around January 25, 1996, Fannie Denora Lawrence Harris, an unremarried widow, Robbie Loretta Harris Greenhill, a divorced woman, Tommy Lee Harris, a married man, conveyed to Patricia Payne "Parcel 1." Instrument Number 1996-02627.</i></p>	<p><i>Based on prior Instrument Number 1996-12522, in the Probate Court of Shelby County, Alabama, on or around April 17, 1996, Mary Harris, an unmarried widow conveyed to Kenneth A. Howell and Hazel B. Howell "Parcel 1." The Deed provided that <b>"the parties are exchanging deeds to reflect the actual property that each is in possession of, and to exchange the properties described in Deed Book 211, Page 393, and Deed Book 221, Page 163, in the Probate Office of Shelby County, Alabama."</b> It appears Harris could not convey "Parcel 1" to the Debtor but only could convey "Parcel 2."</i></p>
<p><i>In the Probate Court of Shelby County, Alabama, on or around April 18, 1996, Kenneth A. Howell and Hazel B. Howell, conveyed to Terry Wayne Beam, Jr. "Parcel 1." Instrument Number 1996-12617.</i></p>	



Upon information and belief, it appears that "Parcel 1" could not be conveyed from Mary Harris to the Debtor, rather what was conveyed to the Debtor was "Parcel 2." Upon information and belief, the Debtor since the conveyance of "Parcel 1" on January 25, 1996, Fannie Denora Lawrence Harris, an unremarried widow, Robbie Loretta Harris Greenhill, a divorced woman, Tommy Lee Harris, a married man, conveyed to Patricia Payne "Parcel 1." Instrument Number 1996-0267 has either occupied and/or exercised dominion and control over "Parcel 2."

8. "Parcel 2" does not appear to have any mortgages that currently encumber it. However, "Parcel 1" does. Upon information and belief, there is currently no lien, mortgage or any other encumbrances that contains the legal description of "Parcel 2." Again, to show unto to this Court what clearly transpired the continued title history will be shown. The relevant continued title history for "Parcel 1" as to Patricia A. Payne, the Debtor is attached to as Exhibit "E." The relevant continued title history for "Parcel 2" at to Terry Wayne Beam, Jr. is attached hereto as Exhibit "F."

<b>"Parcel 1" as to Patricia A. Payne, the Debtor</b>	<b>"Parcel 1" at to Terry Wayne Beam, Jr.</b>
<i>In the Probate Court of Shelby County, Alabama, on or around January 25, 1996, Fannie Denora Lawrence Harris, an unremarried widow, Robbie Loretta Harris Greenhill, a divorced woman, Tommy Lee Harris, a married man, conveyed to Patricia Payne "Parcel 1." Instrument Number 1996-02627.</i>	<i>In the Probate Court of Shelby County, Alabama, on or around April 18, 1996, Kenneth A. Howell and Hazel B. Howell, conveyed to Terry Wayne Beam, Jr. "Parcel 1". Instrument Number 1996-12617.</i>
<i>In the Probate Court of Shelby County, Alabama, on or around January 25, 1996, Fannie Denora Lawrence Harris, an unremarried widow, Robbie Loretta Harris Greenhill, a divorced woman, Tommy Lee Harris, a married man, executed a mortgage to Patricia Payne, as a borrower, on "Parcel 1" in the amount of</i>	<i>In the Probate Court of Shelby County, Alabama, on or around December 5, 1996, First Family Financial Services, Inc. executed a mortgage to Terry Wayne Beam, Jr., as a borrower, on "Parcel 1" in the amount of \$5,895.33. Instrument Number 1996-40039.</i>



<i>\$25,100.00. Instrument Number 1996-02628.</i>	
<i>In the Probate Court of Shelby County, Alabama, on or around July 27, 1999, Equity National Mortgage, Inc. executed a mortgage to Patricia Payne, as a borrower, on "Parcel 1" in the amount of \$42,644.39. Instrument Number 1999-31243.</i>	
<i>In the Probate Court of Shelby County, Alabama, on or around July 27, 1999, Equity National Mortgage, Inc. assigned its mortgage to AmSouth Bank as to "Parcel 1." Instrument Number 1999-31244.</i>	

There appears to be title discrepancy as to "Parcel 1" as shown in the above-listed paragraphs. Upon information and belief, the Debtor could not have received title to "Parcel 1" in 1996 from Mary Harris and her children, the heirs of her deceased husband because of Instrument Number 1996-12522. This instrument, as recorded in the Probate Court of Shelby County, Alabama, on or around April 17, 1996, provided that "the parties are exchanging deeds to reflect the actual property that each is in possession of, and to exchange the properties described in Deed Book 211, Page 393, and Deed Book 221, Page 163, in the Probate Office of Shelby County, Alabama." Please see attached hereto Exhibit "G" which is a true and correct copy of the Instrument Number 1996-12522 in the Probate Court of Shelby County, Alabama. Based on Exhibit "G" it appears that Harris could not convey "Parcel 1" to the Debtor. Based on Exhibit "G" Harris could have only conveyed "Parcel 2" to the Debtor.

9. The survey and the probate county records at the Probate Court of Shelby County, Alabama conclusively show that the Debtor's interest, therefore the Estate's interest, only relates to "Parcel 2" and not "Parcel 1." Exhibit "B," Exhibit "C," Exhibit "D," Exhibit "E," Exhibit "F," and Exhibit "G."



10. The Trustee proposes to sell the above-described "Parcel 2" free and clear of any and all mortgages, liens, interests and/or other encumbrances **by private sale through Lou Thorne of Keller-Williams Realty to Denny M. Looney, III for \$73,500.00 with a closing date set for January 27, 2006.** Please see a copy of the Contract for Sale and Purchase attached hereto as Exhibit "H". All liens, interests and/or encumbrances shall attach to the proceeds of such sale to the same extent and with the same priority as said liens, interests and/or encumbrances presently attach to the subject real property. The Trustee reserves the right to contest the validity, priority and/or extent of any such claim, lien or other interest.

11. The real property shall be sold "AS IS" and the Trustee shall give no guarantee or warranty as to the property sold.

12. Upon information and belief, no other persons claim an interest in the real property to be sold.

13. Upon information and belief, there is no mortgage or encumbrance against the subject realty as previously described as "Parcel 2."

14. The Trustee proposes to sell the above described real property, pay all Administrative Expenses associated with the sale, including but not limited to title binder costs, taxes, closing attorney's fees, any real estate agent's commission and any other closing costs in full, with the remaining proceeds to be held by the Trustee which will be held by the Trustee pending further Order of this Court.

15. Upon information and belief, it appears that the estate will gain approximately \$61,940.02, which is the anticipated net proceeds from the instant sale.



16. IF YOU CLAIM A LIEN ON OR AN INTEREST IN ANY OF THE PROPERTY WHETHER OR NOT IT IS SET FORTH HEREIN ABOVE, YOU SHOULD IMMEDIATELY MAKE SUCH LIEN OR INTEREST KNOWN TO THE TRUSTEE AND THE COURT. THIS PROPOSED SALE MAY AFFECT YOUR RIGHTS UNDER TITLE 11 UNITED STATES CODE SECTION 363.

WHEREFORE, upon the above stated premises, the Trustee moves this Honorable Court to:

- A. Pursuant to Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure, Order the date, time and place of the hearing on this Motion to Sell real property of the estate and the time within which objections to said Motion shall be filed and served upon the Trustee;
- B. At such hearing, issue an Order authorizing the sale free and clear of all liens, interests, and/or other encumbrances as proposed above.
- C. Pursuant to Rule 6004(f)(2) of the Federal Rules of Bankruptcy Procedure, authorize the Trustee to execute any instruments necessary or ordered by the Court to effectuate the transfer of the real property described above;
- D. Order that if there is a dispute among the interested parties or Trustee on the real property as to the validity, amount, or priority, of any such lien or claim, such sale is approved and confirmed on the basis requested, and the Trustee is directed to hold the net proceeds, subject to payment upon proper application for professional fees and other administrative expenses pursuant to Title 11 United States Code Sections 330, 506, 724 or any other applicable code sections and to bring an adversary proceeding to resolve said disputes. This right is reserved notwithstanding any other provision of this Order.



E. Order that the liens, and/or interest of parties named herein attach to the net proceeds of the sale in accordance with their interest or relative priority as to be established by applicable state and federal law subject to further order of this Court.

F. Grant such other, further and different relief as may be necessary to effectuate the sale of the assets.

Dated this the 22nd day of December, 2005.

/s/ E.B. Harrison Willis

E.B. Harrison Willis

**OF COUNSEL:**

TOFFEL & ALTMANN, P.C.  
1929 3<sup>rd</sup> Ave North  
Fourth Floor Farley Building  
Birmingham, Alabama 35203  
(205) 252-7115

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Motion has been served upon the following via electronic notification, by mailing a copy of same via First Class U.S. Mail, postage prepaid and properly addressed, or otherwise as indicated below this 22nd day of December, 2005.

J. Thomas Corbett, Esq. Bankruptcy Administrator's Office Robert S. Vance Federal Building 1800 Fifth Avenue, North – Unit 132 Birmingham, Alabama 35203	Joel F. Alexander, III, Esquire 722 Creekside Court Helena, AL 35080
Patricia A. Payne 809 Lynn Dale Lane Birmingham, AL 35214	Joy J. Minner, Esquire 1500 Urban Center Drive, Suite 450 Birmingham, AL 35242
Terry Wayne Beam, Jr. 2292 Riverbend Road West Blockton, AL 35184	Shelene Connell First Family Financial Services, Inc. 682 Clanton Market Place Clanton, AL 35045
Via Certified Mail C. Dowd Ritter	Steven Ralph Sears, Esquire



Chairman, President and Chief Executive Officer AmSouth Bancorporation 1900 5 <sup>th</sup> Ave North Birmingham, AL 35203	P. O. Box 4 Montevallo , AL 35115-0004
Fannie Denora Lawrence Harris 51 Highway 255 Montevallo, AL 35115	Mary Harris 6586 Highway 10 Montevallo, AL 35115
Fannie Denora Lawrence Harris 6786 Highway 10 Montevallo, AL 35115	Fannie Denora Lawrence Harris RR 4 Box 183 Montevallo, AL 35115
Tommy Lee Harris 6181 County Road Abbeville, AL 36310	Tommy Lee Harris 3604 Brenda Ave SW Birmingham, AL 35221
Tommy Lee Harris 5905 Ivy Street Birmingham, AL 35228	Tommy Lee Harris PO Box 211 Hamilton, AL 35570-0211
Loretta Harris 51 Highway 255 Montevallo, AL 35115	Robbie Loretta Harris Greenhill PO Box 630 Pelham, AL 35124-0630
Robbie Loretta Harris Greenhill RR 6 Box 127 Montevallo, AL 35115	Robbie Loretta Harris Greenhill 2124 Old Montgomery Highway Pelham, AL 35124-1138
Michael Thomas Atchison P. O. Box 822 Columbiana , AL 35051-0000	Kenneth A. Howell 16326 Lisa Dawn Lane Houston, TX 77049

/s/ E.B. Harrison Willis  
 OF COUNSEL

Shelby County, AL 02/06/2006  
 State of Alabama  
 Deed Tax: \$1.00