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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

December 21, 2005

The Honorable David Hamilton
Clerk of Court, York County
P. O. Box 649
York, South Carolina 29745

Dear Mr. Hamilton:

In a letter to this office you raised several questions regarding the duties of clerks of court and registers of deeds.

In your first question you asked whether various documents should be filed in the clerk of court's office or the office of the register of deeds. To the extent I am able, I will refer to specific statutes which comment on such filings. Otherwise, it is my best judgment as to where I believe these documents should be filed based upon the nature of these documents. Of course, you may wish to contact the State Court Administration office as to whether that office has any guidance as to the filing of such documents. Also, certain statutes refer both to the clerk of court and office of the register of deeds. In my opinion, if there is no register of deeds, the document should be filed in the clerk's office. However, in those counties where a register of deeds exists, in my opinion, matters should be filed in that office.

Your first group of documents listed divorce decrees, separation agreements, family court orders- money or land related, pendente lite orders, qualified domestic relations orders, amended decrees of divorce, amended qualified domestic relations orders, temporary orders of the family court, and prenuptial agreements. As to these documents, it is my opinion that they should be filed with the clerk of court's office to the extent they represent family court matters.. Generally, pursuant to S.C. Code Ann. § 14-17-20, "(t)he clerk of court of common pleas...is ex officio clerk of the court of general sessions, the family court, and all other courts of record in the county except as may be provided by the law establishing the other courts." A clerk of court, as clerk for the family court, would in my opinion be the proper official with whom these documents should be filed. I am unaware of any statute referring to the filing of a prenuptial agreement so I am unable to advise regarding such filing.

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One other statute, S.C. Code Ann. § 30-5-90 may be applicable in given situations. That provision states that

The register of deeds is required to record in the order of the times at which they may be brought to his office, all marriage settlements and all conveyances and mortgages, renunciations of dower and other writings concerning the titles to lands situate in his county which may be lodged with him to be recorded if the execution of any such writing shall be proved by affidavit of a subscribing witness, or otherwise, as herein provided. Every such writing shall be recorded within one month after its lodgment and the recording shall bear even date with the lodgment. On every such writing shall be endorsed a certificate, to be signed by the register or his deputy, specifying the time when and book and page where it was recorded.

You next referred to a discharge of debtor, bankruptcy notices. As to bankruptcy matters, S.C. Code Ann. § 30-5-190 states:

A certified copy of a petition, with schedules omitted, commencing a proceeding under the Bankruptcy Act of the United States, of the decree of adjudication in such proceeding or of the order approving the bond of the trustees appointed in such proceeding may be filed, indexed and recorded in the office of the register of deeds or clerk of court in those counties in which the office of register of deeds has been abolished in the same manner as deeds. The register of deeds or the clerk of court in those counties in which the office of register of deeds has been abolished shall file, index under the name of the bankrupt and record such certified copies filed for record in the same manner as deeds, for which services he shall be entitled to the same fees as are provided by law for filing, indexing and recording deeds.

I am unaware of any statutes that specifically refer to discharge of debtor, bankruptcy notices. However, inasmuch as these provisions reference the register of deeds, it is my best judgment that the discharge of debtor, bankruptcy notices should be filed with the register of deeds.

As to notices of project commencement, S.C. Code Ann. § 29-5-23 states that "(a)ny person entering into a direct agreement with, or with the consent of, an owner for the improvement of real property may file with the clerk of court or register of deeds in the county or counties where the real property is situate a notice of project commencement." Referencing such, in my judgment, such should be filed with the register of deeds. An amended notice of project commencement should also be filed in that office.

You next questioned the filing of certificates of worth, satisfactions of certificates of worth and a certificate of worth withdrawn. You indicated that such are utilized to create a lien against property when that property is used for bail bond purposes. I am unaware of any statutes that

specifically refer to the filing of such, but inasmuch as they create a lien against property, in my opinion, such documents should probably be filed with the register of deeds.

As to a warrant of attachment and a partial release of a warrant of attachment, the statutes referring to attachments, S.C. Code Ann. §§ 15-19-10 et seq., refer to both the office of the clerk of court and a register of deeds office. For instance, Section 15-19-40 states that "(a) warrant of attachment must be obtained from a judge, clerk of the court or magistrate in which or before whom the action is brought or from a circuit judge. Section 15-19-70 similarly refers to an affidavit being filed in the clerk of court's office. Section 15-19-240 states that

When real estate is attached a true and attested copy of the attachment, together with a description of the real estate attached, shall be, by the officer serving the warrant of attachment, delivered to the party whose real estate is attached or left at his last and usual place of abode. And the officer making such service shall also leave a true and attested copy of such attachment, together with a description of the real estate so attached, in the office in which by law a deed of such estate is required to be recorded. If the party whose estate is attached does not reside in this State then such copy shall be delivered to his tenant, agent, or attorney if any be known, and, if no such agent, tenant or attorney be known, then a copy of such warrant of attachment with the officer's return thereon lodged in the office in which by law a deed of such real estate ought to be recorded shall be deemed sufficient service. The clerk or register of the office wherein any such warrant of attachment is required to be lodged shall receive such warrant and enter in a book kept for that purpose the names of the parties, the date of the warrant of attachment, the sum demanded and the officer's return thereon. Such attachment shall be a lien subject to all prior liens and bind the real estate attached from the date of lodgment. All attachments lodged upon the same day shall take rank together.

Section 15-19-510 states that as to attachments for actions for purchase money

In an action arising for the recovery of purchase money which is past due for any real or personal property, the plaintiff, at the time of the issuing of the summons or any time afterwards, may cause the property of the defendant for which the purchase money is payable to be attached in the manner prescribed in this article as a security for the satisfaction of such judgment as the plaintiff may recover. For the purposes of this section an action shall be deemed commenced when the summons is issued. The warrant of attachment must be obtained from a judge, clerk of the court or magistrate in which or before whom the action is brought, or from a circuit judge. The warrant of attachment may be issued whenever it shall appear by affidavit that a cause of action exists against such defendant, specifying the amount of the claims and the grounds thereof, that the amount is due and that the action is brought for the

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purchase money of real estate or personal property which has been sold to the defendant and which he has refused or failed to pay. The plaintiff at the time of procuring such warrant of attachment shall file the affidavit upon which it is granted in the office of the clerk of court of common pleas or with the magistrate in which or before whom the action is to be tried.

Section 15-19-530 states that

The sheriff or constable to whom such warrant is directed and delivered shall immediately attach the real estate or personal property of the defendant which is described in the warrant and hold it until further order of the court. When real estate is attached a true and attested copy of such warrant shall be, by the officer serving it, delivered to the defendant or left at his last or usual place of residence, and the officer making such service shall also leave a true and attested copy of such warrant of attachment in the office in which, by law, a deed of such estate is required to be recorded. If the party whose estate is attached does not reside in this State then such copy shall be delivered to his tenant, agent or attorney, if any be known, and if no such agent, tenant or attorney be known then a copy of such warrant of attachment, with the officer's return thereon, lodged in the office in which, by law, a deed of such real estate ought to be recorded, shall be deemed sufficient service. The clerk or register of the office wherein the warrant of attachment is required to be lodged shall receive such warrant and enter in a book kept for that purpose the names of the parties, the date of the warrant of attachment, the sum demanded and the officer's return thereon.

As to where matters related to attachment should be filed, I can only suggest that you consult the pertinent provisions of Sections 15-19-10 et seq. inasmuch as the various statutes refer both to the clerk's office and the register of deeds office depending on the filing taking place.

You next questioned the filing of various liens and releases of liens, including a weed and rubbish lien, a water and sewer lien, a homeowners association lien, and a demolition lien. I am unaware of any statutes that specifically provide for the filing of such liens. However, in my opinion, inasmuch as they would probably be considered as liens against property, these liens should be filed with the register of deeds.

As to mental health liens, S.C. Code Ann. § 44-23-1140 states that

There is hereby created a general lien upon the real and personal property of any person who is receiving or who has received care or treatment in a State mental health facility, to the extent of the total expense to the State in providing the care, training or treatment. The Department of Mental Health shall send to the clerk of

court or the register of deeds in those counties having such officer and the judge of probate of the county of the patient's or trainee's known or last known residence a statement showing the name of the patient or trainee and the date upon which the lien attaches, which shall be filed in the offices of the clerk of court or the register of deeds in those counties having such officer and the judge of probate in each county in which the patient or trainee then owns or thereafter acquires property, real or personal, and no charge shall be made for this filing. From the time of filing in either office, the statement shall constitute due notice of the lien against all property then owned or thereafter acquired by the patient or trainee. No action to enforce the lien may be brought more than one year after the patient's or trainee's death. This lien shall in no way affect the right of homestead.

Inasmuch as such provision states that the matter should be sent "to the clerk of court or the register of deeds in those counties having such officer", consistent with the advice set forth previously, in my opinion, deference is given to the office of the register of deeds and that office is the appropriate office to receive such matter.

As to federal tax liens and releases, S.C. Code Ann. § 12-57-30 states that

Notices of liens for taxes payable to the United States of America and certificates discharging such liens shall be filed in the office of the register of deeds (or clerk of court in those counties in which the office of register of deeds has been abolished) of the county in this State within which the property subject to such lien is situated.

Pursuant to S.C. Code Ann. § 12-57-40

When a notice of such lien is filed, the county register of deeds or clerk of court, as the case may be, shall forthwith enter it in an alphabetical Federal tax lien index, showing on one line the name and residence of the taxpayer named in such notice, the collector's serial number of such notice, the date and hour of filing and the amount of tax with interest, penalties and costs. He shall file and keep all original notices so filed in numerical order in a file or files designated "Federal Tax Lien Notices."

Pursuant to S.C. Code Ann. § 12-57-50,

When a certificate of discharge of any tax lien issued by the collector of internal revenue or other proper officer is filed in the office of the county register of deeds or clerk of court, as the case may be, where the original notice of lien is filed, such county register of deeds or clerk of court shall enter such certificate with the date of

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filing in such Federal tax lien index on the line where the notice of the lien so discharged is entered and shall permanently attach the original certificate of discharge to the original notice of lien.

S.C. Code Ann. § 12-57-60 states that:

Such Federal tax lien index and file or files for such Federal tax lien notices shall be furnished to the county register of deeds or clerk of court in this State in the manner provided by law for the furnishing of books in which deeds are recorded.

Therefore, the office of the register of deeds would be the appropriate office in your situation. Consistent with such, in my opinion, a federal tax lien release would likewise be filed with the register of deeds.

As to state tax liens and satisfactions, S.C. Code Ann. § 30-5-15 states

Notwithstanding any other provision of law, in those counties which have a register of deeds, the duties of the clerk of court for the county pertaining to the indexing and filing of state tax liens are hereby devolved upon the register of deeds for the county and the register of deeds shall index and file such liens in his office in the same manner as required of the clerk of court by law.

Pursuant to S.C. Code Ann. § 30-5-16,

On the effective date of §§ 30-5-15 and 30-5-16, in those counties which have a register of deeds, all current records pertaining to state tax liens shall be maintained in the office of the register of deeds unless otherwise directed by the governing body of the county concerned. The register of deeds may begin a new record book of state tax liens beginning with liens filed after August 1, 1978, but such book shall note on the cover that the records of the clerk of court relating to state tax liens are on file in the office of the clerk of court and contain a record of state tax liens which are still effective.

Therefore, the register of deeds would be the appropriate office for such filings and satisfactions.

As to mechanics liens and releases, S.C. Code Ann. § 29-5-70 states

Except as otherwise provided in Section 29-3-50, a lien claimed by any mechanic or materialman furnishing labor, services, or material is not enforceable against any mortgage recorded before the filing of the notice pursuant to Section 29-5-90 setting forth the statement of account upon which the lien is based.

S.C. Code Ann. § 29-5-90 states

Such a lien shall be dissolved unless the person desiring to avail himself thereof, within ninety days after he ceases to labor on or furnish labor or materials for such building or structure, serves upon the owner or, in the event the owner cannot be found, upon the person in possession and files in the office of the register of deeds or clerk of court of the county in which the building or structure is situated a statement of a just and true account of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien sufficiently accurate for identification, with the name of the owner of the property, if known, which certificate shall be subscribed and sworn to by the person claiming the lien or by someone in his behalf and shall be recorded in a book kept for the purpose by the register or clerk who shall be entitled to the same fees therefor as for recording mortgages of equal length. Provided, that in the event neither the owner nor the person in possession can be located after diligent search, and this fact is verified by affidavit of the sheriff or his deputy, the lien may be preserved by filing the statement together with the affidavit. The delivery on the register or clerk for filing, as provided in this section, shall be and constitute the delivery contemplated with regard to such liens in Title 30 of this Code.

S.C. Code Ann. § 29-5-110 provides that

At any time after service and filing of the statement required under § 29-5-90 the owner or any other person having an interest in or lien upon the property involved may secure the discharge of such property from such lien by filing in the office of clerk of court or register of deeds where such lien is filed his written undertaking, in an amount equal to one and one-third times the amount claimed in such statement, secured by the pledge of United States or State of South Carolina securities, by cash or by a surety bond executed by a surety company licensed to do business in this State, and upon the filing of such undertaking so secured the lien shall be discharged and the cash, securities or surety bond deposited shall take the place of the property upon which the lien existed and shall be subject to the lien. In the event of judgment for the person filing such statement in a suit brought pursuant to the provisions of this chapter, such judgment shall be paid out of the cash deposited or, in event of pledge of securities, it shall be paid from the proceeds of a sale of so much of the pledged securities as shall be necessary to satisfy such judgment or, in event of the filing of a surety bond, the surety company issuing such bond shall pay such amount found due, not to exceed the amount of the bond. Unless suit for enforcement of the lien is commenced as required by § 29-5-120, the undertaking herein required shall be null and void and the principal therein shall have the right to have it canceled and such

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cash or securities deposited or pledged or surety bond filed shall be released from the lien herein provided.

Consistent with such, in my opinion, a mechanics lien and release should be filed with the office of the register of deeds.

You next questioned how long are you required to maintain original federal and state tax liens in your office. You indicated that currently you are maintaining the originals as part of your recorded documents that are kept indefinitely as well as scanning such documents for access by computer. I am unaware of any statutes providing for the destruction of original federal and state tax liens. In fact, Section 12-57-40 states that a register of deeds or clerk of court "...shall file and keep all original notices so filed in numerical order in a file or files designated "Federal Tax Lien Notices." Consistent with such, in my opinion, you should continue with your present policy of maintaining such lien notices unless advised otherwise.

You have also questioned how long are you required to required to keep original mechanics liens if a scanned copy is used for recording purposes. Consistent with the previous response, I am unaware of any statutes providing for the destruction of original mechanics liens. Therefore, unless advised otherwise you should continue to keep such.

As to retention of these documents, you may wish to contact the County Records Division at the State Department of Archives and History as they may be able to provide additional information regarding how long documents must be kept. Their telephone number is 1-803-896-6122..

You next asked whether tax liens are required to be maintained separate from other liens, i.e., in a separate book, or can these liens be included in a book with other types of liens and documents. As to federal tax liens, Section 12-57-40 referenced above, provides that "(w)hen a notice of such lien is filed, the county register of deeds or clerk of court, as the case may be, shall forthwith enter it in an alphabetical Federal tax lien index...." Section 12-57-60 states that "(s)uch Federal tax lien index and file or files for such Federal tax lien notices shall be furnished to the county register of deeds or clerk of court in this State in the manner provided by law for the furnishing of books in which deeds are recorded." As to state tax liens, Section 30-5-16 state that "(t)he register of deeds may begin a new record book of state tax liens beginning with liens filed after August 1, 1978, but such book shall note on the cover that the records of the clerk of court relating to state tax liens are on file in the office of the clerk of court and contain a record of state tax liens which are still effective." Consistent with such provisions, in my opinion, tax liens should be kept in a separate book from other types of liens.

You indicated that in York County the county seat is in the City of York but the family court is located in Rock Hill. Referencing such, you have questioned whether family court documents

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including divorce decrees, separation agreements, annulments and qualified domestic relations orders should be filed at the courthouse in York or at the family court in Rock Hill. You indicated that presently such are filed with the family court in Rock Hill. In my opinion, inasmuch as it is the presently accepted practice of filing such documents with the family court in Rock Hill, I am unaware of any reason to change such. I am unaware of any statutes or prior opinions of this office that comment on such. However, you may wish to contact the State Court Administration office for their input as to such filings.

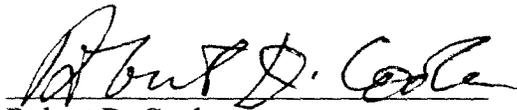
Hopefully, the above is in full response to your inquiry. If you have any further questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General