



ALAN WILSON
ATTORNEY GENERAL

December 5, 2012

Marvin C. Jones, Esquire
Jasper County Attorney
Post Office Box 420
Ridgeland, South Carolina 29936

Dear Mr. Jones:

Attorney General Alan Wilson has referred your letter of October 16, 2012 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issue based on that understanding.

Issue:

Does the law require a Registrar of Deeds to record a Manufactured Home Affidavit for Retirement of Title Certificate where the Affidavit was not in the proscribed form under South Carolina Code § 56-19-510?

Short Answer:

As far as the law reads, the recording officer may refuse any document that does not meet the statutory prerequisites for recording. The document should not be refused recording because it varies in form alone, nor should it be refused because it is illegible. In order for the recording officer to refuse to record a document, at least one of the statutory requirements would have to be missing.

Law/Analysis:

South Carolina Code § 56-19-510 provides that:

- (A) An owner of a manufactured home may affix the home to real property by:
 - (1) installing the home in accordance with the required installation standards and removing the wheels, axles, and towing hitch; and
 - (2) filing with the register of deeds or clerk of court, as appropriate, for the county in which the manufactured home is located the Manufactured Home Affidavit for the Retirement of Title Certificate in the form prescribed in this article together with proof of ownership as evidenced by a copy of the most recent deed of record or other instrument vesting title, and paying the filing fee required for affidavits by Section 8-21-310.

- (B) The register of deeds or clerk of court must record the affidavit as if it were a deed to real property with the homeowner being identified as grantor and give notification to the county assessor.

page. (A separate sheet identified as "Exhibit A" may be attached.)

(6) Derivation: This being the identical or a portion of property conveyed or leased to the owner by deed or lease from _____ and recorded _____ in Book _____ at page _____.

Tax map number _____

Tax billing address _____

(7) The above-described manufactured home is permanently affixed or is to be permanently affixed to the above-described real property and the title certificate is to be retired in accordance with applicable law.

(8) Check if applicable:

_____ The owner of the manufactured home owns or has a leasehold estate of thirty-five or more years in the real property to which the manufactured home is affixed.

(9) WARNING: the execution and filing of this affidavit transfers ownership of the manufactured home to the lawful owner of the real property to which it is affixed.

The owner certifies that the above information provided by the owner is true and correct to the best information and belief of the owner.

Date: _____

Signature of owner: _____

Type or print name of owner _____

Witness: _____

Witness: _____

STATE OF SOUTH CAROLINA)

COUNTY OF _____)

PROBATE

Before me, the undersigned Notary Public, personally appeared _____, who, being duly sworn, deposed and said that (s)he saw _____, sign, seal, and deliver the foregoing Affidavit and that (s)he, together with _____ witnessed the execution thereof.

SWORN to before me this _____ day of _____
Notary Public for _____ (L.S.)
My Commission Expires: _____

Additionally, South Carolina Code § 56-19-560 says:

Upon an owner of a manufactured home meeting all requirements of this article for retiring the title certificate on his manufactured home and having the manufactured home and the real property to which it is affixed classified as real property, the register of deeds or clerk of court in the county where it is located in all indexes and transactions regarding the manufactured home and the real property to which it is affixed must confer upon it the treatment required by Section 56-19-510(C) and may not in any particulars still treat the manufactured home as personal property.

By way of background, recording and registration laws are “purely the creation of the statute law, and therefore subject to such variety as to form, methods, etc., as to the legislative mind may seem best.” Milford v. Aiken, 61 S.C. 110 at 111, 39 S.E.2d 233 (1901). This Office has issued prior opinions addressing a recording officer’s duties. A recording officer would include a Clerk of Court, a Register of Mesnes Conveyance and a Register of Deeds. Based on how this Office reads the law, a recording officer only has the authority expressly provided by statute and is necessary to implement those statutory powers. The recording officer holds a ministerial office. Op. S.C. Atty. Gen., 1982 WL 189145 (January 20, 1982). “In the absence of a statute to the contrary, it is not his [the recording officer’s] province to determine whether the parties have made valid instruments...” Id. (citing 76 C.J.S. Registers of Deeds, §2). The recording officer may refuse any document that does not meet the statutory prerequisites. However, the same officer who may refuse documents that do not meet the statutory requirements may also be held liable for negligent failure to record if the document meets the statutory requirements, but is withheld from recording for other reasons, such as illegibility. Id. (citing Burris v. Austin, 85 S.C. 60, 67 S.E.2d 17 (1910)). Even if a document is so illegible the recording officer cannot read it, the safer course is for the recording officer to record the document. Id. One statute granting the recording officer the authority to deny recording a document is based on SC Code § 30-5-30, which says “(e)xcept as provided by statute, before any deed or other instrument in writing can be recorded in this State, it must be acknowledged or proved by ...” Op. S.C. Atty. Gen., 2006 WL 981698 (March 27, 2006) (citing Op. S.C. Atty. Gen., 1982 WL 189845 (January 20, 1982)).

The information given was that your question involved a situation in which the document submitted for recording was not in the form prescribed by the statute (S.C. Code § 56-19-510). After receiving additional clarification from you, it is our understanding the affidavit submitted to retire a manufactured home to the real property was not submitted on the form provided by Jasper County Registrar of Deeds nor did it contain all of the information required by the statute. As long as all the information was on the affidavit submitted, the actual form would not be required by the statute. However, in a situation where the information contained in an affidavit submitted for recording was missing elements required by the statute, it would not satisfy the statutory requirement to be recorded. As you mentioned in your letter, the

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Registrar of Deeds was not certain as to whether she could accept and record the affidavit in its incomplete format. However, the Registrar of Deeds went ahead and recorded the affidavit even though it was not in the prescribed form.

Based on prior opinion (Op. S.C. Atty. Gen., 1982 WL 189145 (January 20, 1982)), if the affidavit or form submitted does not meet the statutory requirements for filing, the recording officer is authorized to refuse to record such a document. In order for the recording officer to refuse to record a document, at least one of the statutory requirements would have to be missing. The document should not be refused because it varies in form alone. An omission in substance is required. However, the document should not be refused solely based on illegibility. Another previous opinion from this Office goes on to say "there is no doubt the recording officer is authorized and required to refuse recordation if the statutory requisites are not met." Op. S.C. Atty. Gen., 2005 WL 2985562 (October 31, 2005). This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Ops. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984). Additionally, the "absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views suppressed therein were consistent with the legislative intent." Op. S.C. Atty. Gen., 2005 WL 2250210 (September 8, 2005) (citing Scheff v. Township of Maple Shade, 149 N.J.Super. 448, 374 A.2d 43 (1977)).

Conclusion:

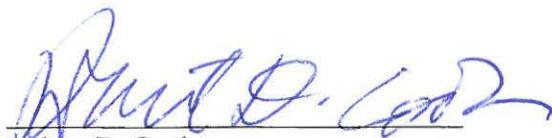
Based on the conclusion that if any requirements by the statute were missing (and not simply illegible) on the manufactured home affidavit for retirement submitted to be recorded, a recording officer would be allowed to deny such a document for recording. Any other issues should be addressed on a case-by-case basis. However, this office is only issuing a legal opinion. Until a court specifically addresses the issues presented in your letter, this is only an opinion on how this office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General