

The State of South Carolina

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May 12, 1992

The Honorable Virginia T. Hafen
Register of Mesne Conveyance
for Spartanburg County
Spartanburg, SC 29301

Dear Virginia:

You have requested the advice of my Office as to whether Registers of Mesne Conveyances (RMC's) and Clerks of Court must accept partial assignments of mortgages for recording. The process of recording is governed by statute (Ops. Atty. Gen. January 25, 1982), but your question is not expressly answered by South Carolina statutes providing for the recording of assignments. See S.C. CODE ANN. §§ 30-5-90 and 30-7-10, et seq. (1991); see also 30-9-30. Case law in South Carolina also does not appear to have addressed this question. See Muller v. Wadlington, 5 S.C. 342 (1874).

Authority elsewhere has cast doubt upon the authority to record partial assignments of mortgages absent clear statutory authority to do so, as shown below:

"It has been observed, however, that recording acts do not apply to partial assignments of mortgages, that they are couched in terms of total assignments." [footnotes omitted]. Osborne, Mortgages, § 244, p. 490 (1970).

"Under some recording statutes it may be doubtful that partial assignments of mortgages can be recorded." Osborne, Real Estate Finance Law, § 5.35, p. 369 n. 8 (1979).

"[The recording acts]...speak only of total assignments; hence, a partial assignment does not come within their terms. It would, indeed, be an unworkable proposition to construe a statute as requiring recordation of partial assignments." Glenn, Mortgages, Volume 3 § 317, p. 1333 (1943).

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The above authority referenced recording statutes in New York and New Jersey that include New York Real Property law § 324 and Rev. Stats. N.J. §§ 46: 18-3 and 18-4. These statutes provide no more express indication than do the South Carolina statutes as to recording partial assignments. Therefore, that these statutes from other jurisdictions have been construed as not permitting the recording of partial assignments provide authority that South Carolina statutes should be similarly construed.

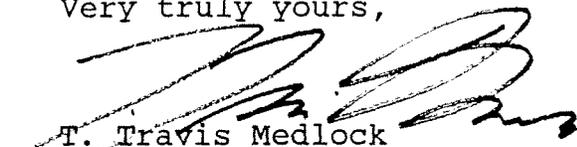
Although section 30-7-10 refers to the recording of "...all assignments...and liens...or other liens on real property created by law or agreement of the parties....", this broad wording is tempered the language therein referring to "...all instruments in writing conveying an interest in real estate required by law to be recorded in the Office of the Register of Mesne Conveyance or Clerk of Court....". (emphasis added); but see also § 30-5-90. Nothing in the South Carolina statute indicates a legislative intent to widen the requirement of recording total assignments to include the requirement of recording partial assignments. See e. g. 46: 18-3 ("...recording officers are authorized to record the assignment of any mortgage...."); but see Osborne, Mortgages, p. 490 n. 59. This language in section 30-7-10 is no broader than language in the above New Jersey statutes found not to apply to partial assignments.

For these reasons, the opinion of this Office is that RMC's and Clerks of Court are not required to accept partial assignments of mortgages for recording; however, because of the absence of express direction from the Legislature on this question, we suggest that you seek legislative clarification on this matter.

I hope that this information will be of assistance to you. If my Office may be of other help to you, please do not hesitate to contact me.

With kindest personal regards, I am

Very truly yours,


T. Travis Medlock
Attorney General

TTM/jps