1976 WL 30491 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
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*1 A derivation clause is not legally sufficient if it does not include the name of the prior grantor and the recording date of that deed; the same derivation clause that appears on the deed must be inscribed on the mortgage; if separate tracts were derived in separate conveyances, each tract must have its own derivation clause; the address of the grantee or mortgagee must appear on a part of the deed which will be recorded.

Senator Richard W. Riley

QUESTIONS PRESENTED:

1. Will the mere recitation of the book and page number of a deed in the derivation clause sufficiently meet the requirements of Act No. 463 of 1976?

2. What type of derivation clause is required in mortgages? If the mortgage contains a number of tracts of land, will each tract require a derivation clause?

3. Where should the address of the grantee or mortgagee appear on the deed or mortgage?

CITATION OF AUTHORITIES:

Act No. 463, Acts and Joint Resolutions of the General Assembly of South Carolina, 1976.

DISCUSSION:

Since Act No. 463 of 1976 was recently enacted on February 6, 1976, there have been, of course, no case decisions or other legal opinions rendered in regard to this legislation. Therefore the present construction of this statute must be based solely on its statutory language.

Section 1 of Act No. 463 prescribes that the derivation clause must include the name of the grantor and the recording date of that deed. Section 2 provides that a deed or mortgage cannot be recorded if it does not have a derivation clause with the prescribed information. A derivation clause with only the Deed Book and page number would not meet the requirements of Act No. 463, since the grantor's name and the prior deeds date or recording as prescribed by Section 1 would not appear 'on the deed.' While the Deed Book and page number are certainly useful information and could obviously be included along with the required information, that alone does not meet the statutory requirement. A derivation clause that would include both the required and practical information would be as follows:
This being the same property heretofore conveyed to the Grantor herein by John Doe by deed, dated, February 6, 1948, and recorded on February 6, 1948, in the Office of the RMC in Deed Book ____, at Page _____.

Act No. 463 also places the same requirement for a derivation clause on mortgages. Since the requirement is imposed and discussed in the same sentence of the statute, it would appear that the same derivation clause that appears in the

deed should appear in the mortgage. Furthermore, if the mortgage included several tracts, it would require a derivation clause for each tract unless the tracts were derived from the same grantor in the same deed. To do otherwise, would obviously defeat the purpose and intent of the statute.

The statute does not specifically direct where the mailing address of the grantee or mortgagee shall appear, except that it shall be 'inscribed on the deed.' Since the outside of the deed normally has no legal significance and is usually not recorded, it would follow that the address should appear on the face of the instrument, although whether it is placed in the upper left hand corner or some other place is purely within the discretion of the drafter of the document.

CONCLUSION:

*2 The derivation clause must include the prior grantor's name and the date of recording of that deed, although further information such as Deed Book and page number may also be included. A similar clause must be included in mortgages. If several tracts are involved which were derived in several separate transactions, each tract must have its own derivation clause. Finally, the address of the grantee of the mortgage must appear on the portion of the deed that will be recorded, although no specific location is required by the statute.

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