



ALAN WILSON
ATTORNEY GENERAL

June 11, 2021

The Honorable Timothy L. Nanney
Greenville County Register of Deeds
301 University Ridge, Ste. 1300
Greenville, SC 29601-3681

Dear Mr. Nanney:

You have requested an opinion of this Office regarding whether an “elected Register of Deeds” can “legally require all real estate documents submitted by a South Carolina licensed attorney be transmitted to the Register of Deeds electronically only.”

LAW/ANALYSIS

The recording of documents by a register of deeds is provided for in the Uniform Real Property Electronic Recording Act (“URPERA”), S.C. Code Ann. § 30-6-10 *et seq.* (1976 Code, as amended). Section 30-6-40 states that a register of deeds “who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index.” S.C. Code Ann. § 30-6-40(b)(4) (1976 Code, as amended) (emphasis added). It explains that “[i]n this section, ‘paper document’ means a document that is received by the register in a form that is not electronic.” S.C. Code Ann. § 30-6-40(a) (1976 Code, as amended).

In a prior opinion of this Office to you, we discussed section 30-6-40(b)(4) and section 12-53-45, which provided that “[w]hen filing documents relating to the enforced collection of taxes due this State with county clerks of court and registers of deeds, the department [of revenue] shall file those documents electronically if the clerk of court or register of deeds accepts electronic filings.” See Op. S.C. Atty. Gen., 2018 WL 1160085 (Jan. 22, 2018); S.C. Code Ann. § 12-53-45 (1976 Code, as amended). We explained that the two statutes had to be construed together because they related to the same subject matter. We stated that “[w]hile Section 12-53-45 mandates that the SCDOR [South Carolina Department of Revenue] file state tax liens electronically, the statute does not state what duty a register of deeds has.” Op. S.C. Atty. Gen., 2018 WL 1160085. Reading section 30-6-40(b)(4)’s language regarding the acceptance of documents by registers of deeds in conjunction with section 12-53-45’s silence regarding the same, we determined that “the General Assembly’s legislative intent appears to mandate that a register of deeds, even one whose office accepts electronic documents, must accept and index a paper document from a filer, including the SCDOR.” Id (emphasis added). Based on the plain

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language of section 30-6-40(b)(4) and our prior opinion,¹ we believe that a court would likely find that a register of deeds cannot legally require an attorney to transmit all real estate documents electronically for recording.

Our conclusion is supported by the editors' notes in reference to section 30-6-40(b)(4):

This act does not require that persons engaging in real estate transactions use electronic documents in order to have their documents recorded. It merely permits the recorder to accept electronic documents if they are presented electronically. Economics, availability of technology, and human nature suggest that not everyone will begin to use electronic real estate documents immediately. It will likely be some time before the use of electronic documents becomes dominant and perhaps well beyond that before paper documents disappear altogether from the conveyancing process. In recognition of that fact, paragraph (4) requires the recorder to continue to accept paper documents even after establishing an electronic recording system. This is a mandatory and not an elective provision.

S.C. Code Ann. § 30-6-40, Comment.

CONCLUSION

It is our opinion that a court would likely find that a register of deeds cannot legally require an attorney to transmit all real estate documents electronically for recording. See S.C. Code Ann. § 30-6-40(b)(4) (1976 Code, as amended) (a register of deeds “who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index.”).

Sincerely,

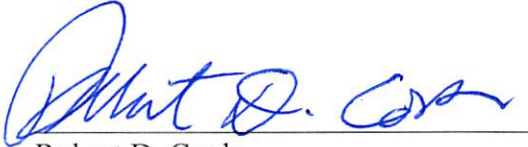


Elinor V. Lister
Assistant Attorney General

¹ See Op. S.C. Atty. Gen., 2020 WL 6379587 (Oct. 22, 2020) (“This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or there has been a change in applicable law.”)

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REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", is written over a horizontal line.

Robert D. Cook
Solicitor General