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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

April 30, 2004

The Honorable Bill Cotty
Member, House of Representatives
522-A Blatt Building
Columbia, South Carolina 29201

Dear Representative Cotty:

You have requested an opinion from this Office to clarify the statutory requirements for the de-titling of manufactured homes, found in Section 56-19-510 of the South Carolina Code. Specifically, you indicate that the statute, as enacted last year, requires that a "certificate of occupancy" be obtained, together with other relevant documents, so that a manufactured home is de-titled and merged with the real estate upon which it is affixed. You further note that, since the passage of the bill, it has come to your attention that a number of county offices in South Carolina do not have a certificate of occupancy form. In your view, this lack of uniformity has caused problems with de-titling procedures for those affected property owners, particularly in those counties not familiar with "certificate of occupancy" forms. You have asked us to clarify this statutory requirement in light of the policy behind the legislation, which is to provide the citizens of South Carolina an accessible and affordable alternative for home ownership.

Law/Analysis

In 2003, the General Assembly enacted Act No. 88 to provide "A Uniform Procedure To Retire the Title Certificate to Certain Manufactured Homes Affixed to Real Property and to Provide for the Creation of a Procedure By Which a Manufactured Home Affixed to Real Property May be Subject To a Mortgage on the Real Property to Which the Manufactured Home is Affixed." This Act is presently codified at S.C. Code Ann. Section 56-19-510. In Section 1 of Act No. 88, the General Assembly set forth its overriding purpose in passage:

> [t]he General Assembly finds that there are circumstances where it is advantageous to classify manufactured homes affixed to real property with the manufactured home being subject to the mortgage. Further, there does not exist a uniform system for retiring the title certificate on a manufactured home, and, as a consequence, citizens are frequently denied opportunities to secure financing on their homes from federally guaranteed sources. To ameliorate the difficulties resulting from the absence of a uniform procedure, the General Assembly intends to provide a uniform procedure for

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> retiring the title certificate for a manufactured home affixed to real property and to provide that manufactured homes affixed to real property in specified circumstances may be subject to a mortgage on the real property. By adoption of a uniform system for the retirement of title certificates on manufactured homes, the General Assembly intends that other statutory and regulatory provisions affecting manufactured housing remain unchanged.

Section 56-19-510 enumerates certain criteria for retirement of a title certificate enabling the owner of a manufactured home to affix the home to real property. Section 56-19-510(A)(2) requires a

> (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, the certificate of occupancy from the appropriate building official of the jurisdiction in which the manufactured home is located, and paying the filing fee required for affidavits by Section 8-21-310. (emphasis added).

Your question focuses upon whether the requirement of a "certificate of occupancy" is mandatory pursuant to § 56-19-510. If so, what options are available to insure compliance therewith? In this regard, a number of principles of statutory construction are pertinent to your inquiry. The primary objective in construing statutes is to determine and effectuate legislative intent if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). A statute must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Words used must be given their plain and ordinary meaning without resort to subtle or forced construction either to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1990). However, our Supreme Court has cautioned against an overly literal interpretation of a statute which may not be consistent with legislative intent. In Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942), the Court recognized that:

> [i]t is a familiar canon of construction that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter. It is an old and well established rule that the words ought to be subservient to the intent and not the intent to the words. Id., at 368-369.

Furthermore, it is well established that the meaning of a statute should not be sought in any single section, but in all parts of the statute together toward the particular end intended. DeLoach v. Scheper, 188 S.C. 21, 198 S.E. 409 (1938). Every part of a statute must be given effect, State ex rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979), and harmonized to render the statute

consistent with the general purpose of the act. Crescent Mfg. Co. v. Tax Commission, 129 S.C., 480, 124 S.E. 761 (1924). When the Legislature has expressed its intention in one part of an act, it must be presumed that such intention is applicable to all parts. State v. Sawyer, 104 S.C. 342, 88 S.E. 894 (1916).

Moreover, a statute will be construed to avoid an absurd result. Any statute must be interpreted with common sense to avoid absurd consequences or unreasonable results. U.S. v. Rippetoe, 178 F.2d 735 (4th Cir. 1950). A sensible construction, rather than one which leads to irrational results, is always warranted. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). In an opinion dated August 23, 1988, we quoted with approval 82 C.J.S. Statutes, § 326 wherein it was stated that

> [a] construction which will cause objectionable results should be avoided and the court will, if possible, place on the statute a construction which will not result in injustice, and in accordance with the decisions constituting statutes, a construction which will result in oppression, hardship, or inconvenience will also be avoided, as will a construction which will prejudice public interest, or construction resulting in unreasonableness, as well as a construction which will result in absurd consequences.

Section 56-19-510 does not define the term "certificate of occupancy." Nor does this provision prescribe a particular form for use in the de-titling process as is the case with the "Manufactured Home Affidavit for Retirement of Title Certificate." See, § 56-19-510(D). Moreover, nothing in the statute authorizes or provides for the waiver of the requirement of a filing of "the certificate of occupancy from the appropriate building official of the jurisdiction in which the manufactured home is located ... ." Absent a removal of this condition by the General Assembly – which, of course, the Legislature is free to do – we read this provision as mandatory. The filing of a "certificate of occupancy" is expressly required in the current law.

However, you are concerned that "a number of counties in our state do not have 'certificate of occupancy' form." Indeed, the General Assembly has itself recognized this fact in § 6-1-1040(2) which makes reference to a "certificate of occupancy, or building permit if no certificate of occupancy is required ...." As an alternative, you suggest that

> [i]n those counties and/or municipalities where a 'certificate of occupancy' form does not presently exist, the owner of the manufactured home in order to comply with the provisions of Section 56-19-510 may instead include an affidavit from the official with jurisdictional authority with regard to building permits so stating that no such form is used and verifying that all local applicable laws as to the affixing of the manufactured home in accordance with installation standards as well as removal of the wheels, axles and towing hitch have been satisfied.

It is our understanding that a "certificate of occupancy" is the document issued by an enforcement agency stating that the particular property in question meets the requirements of local codes, ordinances and regulations. Section 6-9-10 requires all municipalities and counties in South Carolina to

> ... enforce building, energy, electrical, plumbing, mechanical, gas, and fire codes, referred to as building codes in this chapter, relating to the construction, livability, sanitation, erection, energy efficiency, installation of equipment, alteration, repair, occupancy, classification, or removal of structures located within their jurisdictions and promulgate regulations to implement their enforcement. The municipality or county shall enforce only the national building and safety codes provided in this chapter.

See also, § 4-25-10 et seq. Depending upon population, a number of South Carolina municipalities and counties are given a grace period to meet this compliance standard. See, § 6-9-30.

Our Supreme Court has, on occasion, held that an overly literal reading of a statute or other provision of law will not defeat the Legislature's purpose in enacting the law. In such instances, the Court has concluded that substantial compliance with the statute is sufficient. For example, in S.C. Police Officers Retirement System v. City of Spartanburg, 301 S.C. 188, 391 S.E.2d 239 (1990), the Court held that an employee's failure to file a written request and pay his special contribution prior to retirement in strict compliance with the governing statute did not preclude the retiree from receiving his requested retirement benefits. The State Retirement System argued that the statute was directory rather than mandatory and that there had been substantial compliance with the statute. The City of Spartanburg, however, argued that failure to follow the literal requirements of the statute regarding the provision of written notice was fatal. The Supreme Court disagreed, concluding that substantial compliance was adequate. The Court cited the following rule of construction:

> [g]enerally speaking, those provisions which are a mere matter of form, or which are not material, do not affect any substantial right, and do not relate to the essence of the thing to be done so that compliance is a matter of convenience rather than substance, are considered to be directory. This is true of statutory provisions for the expeditions, proper, or orderly conduct of business merely.

301 S.C. at 190, quoting 73 Am.Jur.2d, Statutes § 19 (1974).

Likewise. in Davis v. Nationscredit Financial Services, 326 S.C. 83, 484 S.E.2d 471 (1997), the Court rejected the argument that the statute requiring a lender to use a separate sheet of paper to ascertain a borrowers preferences of legal counsel and hazard insurance had been violated even though "a lender technically deviates from the literal language of [the statute] ... by not ascertaining the attorney and insurance agent preferences through information contained on the first page of the application ... ." There, the Court held that "a lender substantially complies with section 37-10-102

if the borrower receives a clear and prominent disclosure of the statutorily required information." 326 S.C. at 86. The Court explained:

> [i]t would elevate form over substance to hold to the contrary. The facts certified to us declare that Davis received an attorney and hazard insurance preference statement "contemporaneous with her credit application." Although not part of the record, a copy of the statement indicating her preferences in this transaction has been included by Davis herself as an appendix to her brief. Thus, we find that the purpose of the statute – clear and prominent disclosure of the information necessary to ascertain the relevant preferences has been satisfied.

484 S.E.2d at 471-472.

We note that legislation is currently pending (H.4735) which would amend § 56-19-510(A)(2) by removing the "certificate of occupancy" requirement contained therein. Of course, while this amendment is a policy matter for the General Assembly to consider, removal of the provision would provide the simplest legal solution to address the fact that some counties are not familiar with "certificate of occupancy" forms.

Absent amendment by the General Assembly removing the certificate of occupancy requirement, there are two other means to address your concerns. One approach would be the development of a uniform certificate of occupancy form which could be adopted and used by all counties. We understand that the Association of Counties, as well as the Manufacturing Housing Institute of South Carolina are willing to assist counties in developing a form which could be utilized.

However, the fact that the General Assembly did not expressly provide for such a certificate of occupancy form, yet did expressly provide for a form for the Affidavit for the Retirement of Title Certificate may be significant. Such express provision in one instance and lack thereof in another, particularly where some counties do not employ a certificate of occupancy may well suggest an intent by the General Assembly that no particular form is required. See, § 6-1-1040(2) [General Assembly recognizes that a certificate of occupancy may not be required in a particular locality]. See also, Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000) [it is a general rule that "the canon of construction 'expressio unius est excluso alterius' holds that to express or include one thing implies the exclusion of another, or the alternative." While we cannot conclude that the "certificate of occupancy" requirement contained in § 56-19-510(A)(2) is directory rather than mandatory, a court might well conclude that no particular form is necessary. If that is the case, substantial compliance with the statute would be acceptable.

Thus, in our view, even if the General Assembly does not repeal the certificate of occupancy requirement, your suggestion to use "an affidavit from the official with jurisdictional authority with regard to building permits so stating that no such form is used and verifying that all local applicable

laws as to the affixing of the manufactured home in accordance with installation standards as well as removal of the wheels, axles and towing hitch have been satisfied" seems reasonable, in our opinion. We are thus of the opinion that a court would likely deem such an affidavit to be in substantial compliance with the statute in much the same way that our Supreme Court did in the S.C. Police Officers and Davis cases. Such would fulfill the purpose of insuring that all local laws relating to building codes, etc. are being met.

Conclusion

In our opinion, § 56-19-510(A)(2) is written in mandatory, rather than directory terms. Thus, from a legal standpoint, repeal of the certificate of occupancy requirement would certainly be the approach most consistent with the fact that certificates of occupancy are not used in every county. This approach would remove all doubt. Of course, repeal is a policy matter which is only within the province of the General Assembly. Absent repeal, however, your suggestion regarding use of an affidavit from the official with jurisdictional authority with regard to building permits along the lines referenced by you in your letter would likely be deemed by a court to constitute substantial compliance with § 56-19-510.

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

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