



HENRY McMASTER
ATTORNEY GENERAL

April 12, 2006

The Honorable Eldridge R. Emory
Member, House of Representatives
310-D Blatt Building
Columbia, South Carolina 29211

Dear Representative Emory:

We received your request for an opinion of this Office addressing a question raised by Charles R. Cauthen, a constituent of yours. Attached to your request you included a letter addressed to Attorney General McMaster from Mr. Cauthen. In this letter, Mr. Cauthen asks: "Can Kershaw County record a deed, which does not have the same street name or subdivision when the plat or plot was originally recorded?" Mr. Cauthen indicates he received advice from several attorneys, which informed him "it is not right to record a deed if the street name of the recorded sub-division and the name of the recorded sub-division don't match." Furthermore, after asking an attorney for advice on how he could keep a deed from being recorded from a plat, Mr. Cauthen states: "I was told by [the attorney] that they could not do this, if the name of the subdivision and street names were changed, nothing would match the old working plat, which had not be recorded at the time." Mr. Cauthen indicates the plat has been recorded and the property has been deeded, "although the name of the street and the subdivision on that deed, does not exist."

A county register of deeds, as a ministerial officer, has a duty to ensure an instrument submitted for recordation meets the statutory requirements. However, he or she does not have a duty to determine whether the instrument filed is valid. Mr. Cauthen's question appears to concern whether the Kershaw County register of deeds has the authority record a deed. Thus, we surmise as long as the statutory requirements for recordation are satisfied, recording is proper. The validity of such a deed described in Mr. Cauthen's letter is of no consequence to the Kershaw County register of deeds and we find such a determination beyond the scope of an opinion of this Office.

Law/Analysis

In an opinion of this Office dated January 20, 1982, we addressed the nature of a recording officer's duties. Relying on the our Supreme Court's determination that the process of recording an instrument is purely statutory, we stated "a recording officer, when performing his duties pursuant to the recording statutes, is a ministerial officer." Op. S.C. Atty. Gen., January 20, 1982 (citing

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Milford v. Aiken, 61 S.C. 110, 39 S.E. 233 (1901)). Thus, the recording officer's duties entail those prescribed by law. Op. S.C. Atty. Gen., February 10, 2005.

Section 30-5-90 of the South Carolina Code (Supp. 2005) requires the register of deeds

to record in the order of the times at which they may be brought to his office, . . . all conveyances and mortgages, renunciations of dower and other writings concerning the titles to lands situate in his county which may be lodged with him to be recorded if the execution of any such writing shall be proved by affidavit of a subscribing witness, or otherwise, as herein provided.

As we stated in a prior opinion of this Office, this section statutorily requires the recording officer "to record these documents and instruments as they are presented to him for recordation." Op. S.C. Atty. Gen., January 20, 1982.

Although a recording officer is statutorily mandated to record certain documents including deeds, the recording statutes contain several statutory requirements that must be satisfied before an instrument may be recorded. Section 30-5-30 of the South Carolina Code (Supp. 2005) requires proof of execution or compliance with the Uniform Recognition of Acknowledgments Act "before any deed or other instrument in writing can be recorded in this State." Section 30-5-80 of the South Carolina Code (Supp. 2005) requires the county auditor to endorse the deed before it can be recorded. Additionally, section 30-5-35 of the South Carolina Code (1991) mandates: "All deeds conveying an interest in land and all mortgages of real estate executed after July 1, 1976, must include a derivation clause in the property description and there must be inscribed on the deed or mortgage the mailing address of the grantee or mortgagee."

The recording statutes also contain several provisions pertaining to plats filed with the register of deeds office. One provision allows owners of real property to file a plat of their property with the register of deeds office in the county where the property is located. S.C. Code Ann. § 30-5-230 (Supp. 2005). In addition, when real property is subdivided and offered for sale according to a plat section 30-5-240 of the South Carolina Code (1991) necessitates the property owner file such plat with the county register of deeds office. Furthermore, section 30-5-230 of the South Carolina Code (Supp. 2005) states when a plat is recorded with the register of deeds office it "shall be equivalent to setting forth in extenso in such deed, mortgage or other instrument the boundaries, metes, courses or distances of such real estate as may be delineated or shown on any such plat or blueprint, tracing photostatic or other copy thereof." However, in our review of the recording statutes, we did not uncover any provisions requiring the recording officer to ensure the property description on the deed corresponds to any previously recorded plats before the deed may be recorded.

Based on our findings above, the duties of a recording officer are ministerial in nature. Although the recording officer is charged with the duty to determine whether certain statutory

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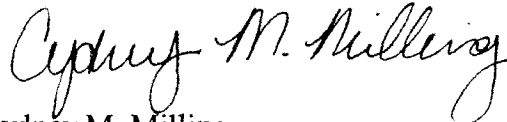
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requirements are met prior to the filing of an instrument, he or she is not charged with the duty to determine whether an instrument filed corresponds to a previously recorded plat. In addition, he or she is not charged with determining whether the instrument itself is valid. Accordingly, as long as the instrument meets the requirements for filing, the recording officer must file the instrument.

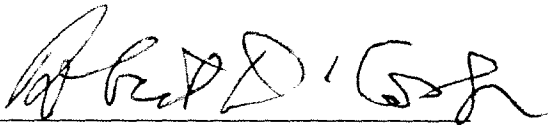
Furthermore, as for the validity of an instrument that illustrates street names and a subdivision name different from a previously filed plat, this determination is factual in nature. "Because this Office does not have the authority of a court or other fact-finding body, we are not able, in a legal opinion, to adjudicate or investigate factual questions." Op. S.C. Atty. Gen., April 16, 2004. Therefore, we find this issue best left to the courts to address.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General