

8124 Library



HENRY McMASTER
ATTORNEY GENERAL

March 27, 2006

The Honorable Timothy L. Nanney
Register of Deeds, Greenville County
301 University Ridge, Suite 1300
Greenville, South Carolina 29601

Dear Mr. Nanney:

In a letter to this office you stated that it has been the practice in your office to scrutinize documents presented for recording. Such typically involves proof reading documents for the individual filer. You stated that "while we make every effort to catch errors submitted by the filer prior to recording, it is very common for us not to catch errors until later in the indexing or verifying process." You have asked how much inspection by your office of a document submitted for recording is required and whether you can legally record a document as submitted.

A prior opinion of this office dated January 20, 1982 dealt with the question of whether a recording officer was authorized to refuse a document for recording based upon illegibility. The opinion stated that:

Our court has stated that the process of recording is "purely the creation of the statute law, and therefore [is] subject to such variety as to form, methods, etc. as to the legislative mind may seem best." Milford v. Aiken, 61 S.C. 110 at 11, 39 S.E. 233 (1901)...Moreover, it is important to remember that a recording officer, when performing his duties pursuant to the recording statutes, is a ministerial officer.

The opinion continued by stating:

Generally speaking, the duty of the register is...to receive and record...such instruments as by law are entitled to be...recorded, and to...record them in such manner as to serve all the purposes of the law. In the absence of a statute to the contrary, it is not his province to determine whether the parties have made valid instruments...In short, the recording officer's authority with respect to recordation is governed solely by statutory law...With few exceptions...the recording officer is statutorily required to record these documents and instruments as they are presented to him for recordation...

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The opinion noted that there are several statutory prerequisites to recordation. The particular authority for a recording officer to refuse a particular recordation is S.C. Code Ann. § 30-5-30 which states that “[b]efore any deed or other instrument in writing can be recorded in this State”, the statutory requirements set forth by such provision must be met. The opinion commented that “[w]ith respect to these statutory requirements (and any other statutory requirements), there is no doubt that the recording officer is authorized and required to refuse recordation if the statutory requisites are not met.” Consistent with such, the referenced opinion concluded that “...where the necessary information for compliance with the statutory requisites can be gleaned from the face of the record as a whole, it is questionable whether the officer can refuse to record the document altogether.” See also: Op. Tex. Atty. Gen. dated May 17, 1988 (“[e]ach document presented to the county clerk for recording must be judged on its own merits. If the document meets the...(statutory)...requirements, the county clerk is required to record the document. It is not the responsibility of the clerk to determine the effect or legality of perceived changes or corrections appearing on the face of the document presented for recording.”).

Another opinion of this office dated October 27, 1977 stated that a register of mesne conveyances was a “ministerial officer”. As such, the opinion determined that “[t]he duties of said officer with respect to the maintenance of public recordation of deeds, mortgages, etc. is largely perfunctory, involving little discretion in the exercise thereof. Such duties are usually prescribed by statute or court rules.”

Consistent with such, in my opinion, as long as the statutory prerequisites for recording are met, it would generally be your obligation as the recording officer to record a document. I am unaware of any requirements that you proof read documents for a individual filer. As a result, it is my opinion that beside the necessary inspection to assure that the statutory prerequisites for recording are met, you may legally record a document as submitted.

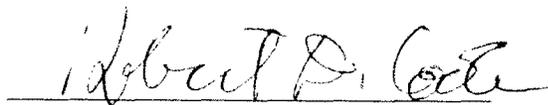
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General