

October 11, 2007

Ms. Peggy Westmoreland
Interim Register of Deeds
Oconee County
415 South Pine Street
Walhalla, South Carolina 29691

Dear Ms. Westmoreland:

We understand you desire an opinion of this Office concerning the attachment of a death certificate to a deed. You explain: "We have received a deed from an attorney with a copy of a copy of a certified death certificate. He is adamant that he can file that attached to the deed." In your letter, you cite to section 27-7-40(b) of the South Carolina Code and state "[i]n reading this code section, I feel that the death certificate must be certified whether it is attached to the deed or filed alone, as the previous deed had been joint tenants with right of survivorship." Moreover, you comment that the attorney you spoke with indicated that anything may be filed as long as it is attached to a deed. Thus, you also question whether this statement is correct.

Law/Analysis

Chapter 7 of title 27 of the South Carolina Code (2007) governs conveyances of property. Section 27-7-40, in particular, addresses the creation of a joint tenancy with regard to property and subsection (b) deals with how a property interest is vested in a surviving joint tenant following the death of a joint tenant. This provision reads:

The surviving joint tenant or tenants may, following the death of a joint tenant, file with the Register of Deeds of the county in which the real estate is located a certified copy of the certificate of death of the deceased joint tenant. The fee to be paid to the Register of Deeds for this filing is the same as the fee for the deed of conveyance. The Register of Deeds must index the certificate of death under the name of the deceased joint tenant in the grantor deed index of that office. The filing of the certificate of death is conclusive that the joint tenant is deceased and that the interest of the deceased joint tenant has vested by operation of law in the surviving joint tenant or tenants in the joint tenancy in real estate.

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S.C. Code Ann. § 27-7-40.

Section 30-5-90 of the South Carolina Code (2007), contained in the South Carolina deed recording statutes, states a register of deeds “is required to record in the order of the times at which they may be brought to his office, all marriage settlements and 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.” Section 30-5-30 of the South Carolina Code (2007), also contained among the deed recording statutes, sets forth the requirements for the recordation of a deed or any other instrument. This provision does not mention a requirement or prohibition against attaching other documents to the deed. Furthermore, we did not find a statute requiring a register of deeds to screen documents attached to deeds. In prior opinions, we noted “the register of deeds when performing her duties pursuant to the recording statutes should be considered a ministerial officer whose duties are absolute and prescribed by law.” Op. S.C. Atty. Gen., February 10, 2005. Although a register of deeds is charged with the duty to determine whether the instruments to be recorded are in compliance with statutory requirements, he or she does not have the ability to determine the validity of such documents. Op. S.C. Atty. Gen., January 20, 1982. Given that we do not find a provision limiting those items that may be attached to deed submitted for recordation, we do not find a duty on behalf of the register of deeds to screen or prohibit the filing of documents attached to a deed.

However, we note that section 27-7-40, which you mention in your letter, specifies the recording requirements in order to conclusively establish that a joint tenant is deceased thereby transferring the deceased joint tenant’s interest by operation of law to the surviving joint tenant or tenants. This provision states that a “certified copy of the certificate of death of the deceased joint tenant” must be filed with the register of deeds of the county in which the real estate is located. S.C. Code Ann. § 27-7-40. Thus, if a surviving joint tenant wishes to conclusively establish the transfer of a deceased joint tenant’s interest to him or her, he or she must file a death certificate in compliance with this statute with the appropriate register of deeds’ office.

Whether or not a copy of a certified copy of a death certificate is sufficient to transfer ownership under section 27-7-40(b) depends upon the statutory construction of this provision. The primary consideration when interpreting a statute is to ascertain and effectuate the intent of the Legislature. Sloan v. South Carolina Bd. of Physical Therapy Examiner, 370 S.C. 452, 468, 636 S.E.2d 598, 606 (2006). “‘If a statute’s language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.’ Instead, the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007) (quoting Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006)).

Section 27-7-40 of the South Carolina Code requires “a certified copy of the certificate of death of the deceased joint tenant” in order to conclusively determine that the interest of the deceased joint tenant is vested in the surviving joint tenant or tenants. According to the plain language used in the statute, a copy of a death certificate may be submitted to meet this qualification. However, we read this provision to require that the copy be certified. Thus, under the scenario you describe, we do not believe a copy of a certified copy of a death certificate is sufficient to meet the requirements of this provision. Accordingly, although we do not find a statutory provision preventing such a document from being filed with a deed, we do not believe a copy of a certified copy of a death certificate for a deceased joint tenant is sufficient to conclusively establish a transfer of ownership from the deceased joint tenant to another joint tenant or tenants under section 27-7-40(b).

Conclusion

In our examination of law governing the recording of deeds, we did not find a provision specifically prohibiting the attachment of documents to a deed submitted for recording. Moreover, we did not find a statute placing responsibility on the register of deeds to prohibit deeds from being filed with documents attached. Thus, we do not believe a register of deeds can prevent the filing of deeds with documents attached to them unless the deed itself fails to satisfy the statutory requirements of the deed recording statutes. However, we note that section 27-7-40(b) requires a certified copy of a deceased joint tenant’s death certificate be filed with the register of deeds in the county where the real estate is located in order for the property interest of a deceased joint tenant to pass to the other joint tenant or tenants by operation of law and thus, conclusively establish a transfer of ownership. Nonetheless, whether or not a copy of a copy of a certified copy is sufficient under section 27-7-40(b) to satisfy the requirements to conclusively establish the transfer of title from a deceased joint tenant to another joint tenant or tenants is questionable.

Very truly yours,

Henry McMaster
Attorney General

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Assistant Attorney General

REVIEWED AND APPROVED BY:

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