ALAN WILSON
ATTORNEY GENERAL

August 24, 2011

The Honorable Anna K. Davidson
Register of Deeds, Oconee County
415 South Pine Street
Walhalla, SC 29691

Dear Ms. Davidson:

We received your letter requesting an opinion of this Office concerning one's ability to file a Notice of Non-Acceptance of Deed of Conveyance. You asked whether "the grantee [must] accept the property conveyed or [may he or she] file a Notice of Non-Acceptance of Deed of Conveyance."

As background, you shared that this issue is "mainly a concern with a timeshare development . . . in Oconee County. The officer of the company has stated that they file these notices in Pennsylvania and also Mississippi but, [you] are questioning the validity of the filing of this document in South Carolina."

Law/Analysis

In an opinion of this Office dated June 5, 1996 we addressed several questions surrounding the closing of the Union County jail. At one point in the opinion, our office drew an analogy with the conveyance of property as follows:

> Our Court has said repeatedly that there can be no delivery or transfer of a conveyance without a clear intent by the parties. Coln. v. Coln, 24 S.C. 596 (1885). The delivery of a deed of conveyance is composed of two concurrent parts: (1) an intention to deliver, and (2) an act evincing a purpose to part with control of the instrument. Neither of these parts by itself is sufficient to part with the instrument. Likewise, **acceptance by the grantee is deemed essential to delivery, and without it a deed does not take effect**. Walker v. Frazier, 2 Rich. Eq. 99 (1845). These principles were summarized by the Court in Ott v. Ott, 182 S.C. 135, 188 S.E. 789 (1936) relating to an inter vivos transfer of property:
>
> > [a] gift inter vivos as its name imports, is a gift between the living. It is a contract which takes place by the mutual consent of the giver, who divests himself of the thing given in order to transmit the title of it to the

> donee gratuitously, and the donee who accepts and acquires the legal title to it.
>
> Thus, in my judgment, [the statute at issue] Section 24-5-12 would require, as with any contract, a clear manifestation of intent on the part of the sheriff to transfer the duties of jailer to the governing body of the County as well as a clear manifestation of acceptance of those duties by the County governing body in the form of its "approval" of the transfer.

Op. S.C. Atty. Gen., June 5, 1996.

S.C. Code § 15-39-790 governs the sale of property by a debtor subject to levy and the confirmation of a sale and deed. The statute reads as follows:

> If no objection as to the price at which the property may have been sold by the judgment debtors shall be made in writing by either of the judgment creditors and filed with the sheriff within three months from and after the time such payment shall have been made, the sale shall thereupon be considered confirmed, and the sheriff shall make the following endorsement on the back of the deed of conveyance, viz.: "**No objection having been filed in my office to the within bargain and sale within the time prescribed by law this bargain and sale is therefore confirmed.**" Such endorsement shall be dated and signed officially by the sheriff.

S.C. Code § 15-39-790. This statute implies that an objection may be filed should one refuse to accept the bargain and sale. Without objection, such a sale is confirmed. While filing a "Notice of Non-Acceptance" is not familiar to our state, the Supreme Court of Wyoming explained in Jenkins v. Miller, 180 P.3d 925 (2008) that "the facts demonstrate that [the Defendant's] February 7, 2005 letter and April 21, 2005 **Notice of Non-Acceptance** of Easement Deed express an **intent to reject** the Easement Deed." Jenkins, 180 P.3d 925, 931 (emphasis added).

American Jurisprudence provides a summary of acceptance by a grantee as follows:

> The acceptance of a deed by the grantee presupposes an antecedent delivery or tender thereof to him. The requisites of acceptance are the grantee's knowledge of delivery or tender of the deed, an intention to take the legal title to the property which the deed purports to convey, and the manifestation of such intention by some act, conduct, or declaration. Where the deed itself specifies the time or manner of acceptance, the grantee must comply therewith.
>
> Acceptance is primarily a matter of the grantee's intention; hence, the significant inquiry is as to his or her intention as manifested by his or her words and acts. Express words and positive acts are not necessary; intention to accept may be inferred from such conduct as conveying or mortgaging the property, recording

> the deed, or otherwise exercising the rights of an owner, provided the grantee had, at the time he or she acted, knowledge of the conveyance. Subsequent assent by a grantee to a conveyance made without such grantee's knowledge is sufficient to constitute an acceptance, at least where there has been a physical delivery of the deed, without reservation, by the grantor to a third party. Where the issue of acceptance is disputed, testimony as to the grantee's declarations is admissible to show intent.
>
> Acceptance of a confirmation deed may be shown by the acts of the grantee clearly indicating an intent to accept.

23 Am. Jur. 2d Deeds § 151.

Conclusion

In accordance with well established principles of delivery and acceptance of a deed, a grantee cannot be forced to accept property. As mentioned above, to convey land, a grantee must demonstrate intent to accept the deed. While the grantee need not understand the nature of the instrument, in this instance a deed, it is necessary that the grantee accept delivery. See, Branton v. Martin, 243 S.C. 90, 98, 132 S.E.2d 285, 288 (1963). In other words, a grantee should not be forced to accept a deed; he or she has the option to refuse acceptance. However, one should note that this opinion in no way condones actions that would constitute a breach of contract. It is the understanding of this Office that filing a "Notice of Non-Acceptance of Deed of Conveyance" is not common practice in South Carolina; however, a grantee could conceivably choose such a method to demonstrate his or her lack of acceptance.

Sincerely,

Leigha B. Sink

Leigha Blackwell Sink
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Deputy Attorney General