



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

January 24, 2001

The Honorable Janice M. Rearden
Register of Deeds
Sumter County
141 N. Main street
Sumter, SC 29150

Dear Ms. Rearden:

You have requested the Opinion of this Office as to whether you may record a satisfaction of a mortgage by a company that has executed an affidavit stating that it is the current mortgagee of the mortgage through assignments that are missing and unrecorded. The company has executed a statement on the mortgage noting that it has been satisfied.

A previous Opinion of this Office concluded that, when the records show that a mortgage has been assigned, the recording officer should not accept a satisfaction for recording unless executed by the assignee appearing of record. *Ops. Atty. Gen. (October 20, 1992)*. In the instant matter, because the assignments were not recorded, the current mortgagee does not appear of record as an assignee of the mortgage.

When the mortgagee has possession of the mortgage and has executed an affidavit of missing assignment, you appear to have adequate authority under South Carolina law to accept the satisfaction for recording. S.C. Code Ann. § 29-3-330 (c) permits an affidavit by the current holder of a lost or destroyed "... mortgage, deed of trust or other instrument securing the payment of money and being a lien upon real property ..." (Supp. 2000). In the instant matter, the mortgage has not been lost, but the assignment is missing. In both of the above situations, an element of the transaction is missing, but the reliability of the recording is provided by an affidavit of the holder explaining the circumstances. In addition, §29-3-330(e) allows for the satisfaction of a mortgage by someone other than the mortgagee of record in its provisions for an attorney to record an affidavit that the mortgage has been paid and that evidence of payment exists. Although section 29-3-330 does not make express provision for recording of an affidavit of lost assignment, such a filing is

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consistent with a reasonable and practical reading¹ of this statute including its provisions allowing for satisfaction of lost mortgages and satisfaction based upon an attorney's affidavit. While you should be able to record the instruments and note the satisfaction in your index, I suggest that you note in the appropriate place in your index or other records a description sufficient to put someone on notice about the circumstances of the satisfaction including that the assignments are missing. As to any similar future transactions, you may want to consider seeking an amendment to §29-3-330 that would make express provision for the handling of satisfactions under these circumstances.

This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

If you have further questions, please let me know.

Yours very truly,


J. Emery Smith, Jr.

Assistant Deputy Attorney General

CC: Johnathon Werber Bryan, Esquire, Sumter County Counsel

¹*State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577, 582 (Ct. App. 1999) (statutory provisions should be given reasonable and practical construction consistent with purpose and policy of entire act).