

## The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

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April 8, 1994

The Honorable JoAnne B. Tribble  
Register Mesne Conveyance  
Post Office Box 248  
Lexington, SC 29072

Dear Ms. Tribble:


You have requested the opinion of this Office as to whether you must record mortgages which contain no express derivation clause. S.C. Code Ann. § 30-5-35 makes mandatory the inclusion of a derivation clause with deeds and mortgages and, when the title was obtained by deed, the clause must include "...the name of the grantor and the recording date of the deed." See Ops. Att'y Gen. September 10, 1991. The face of an instrument must meet recording requirements, or the instrument is not subject to recording by you. See Ops. Att'y Gen. January 25, 1992. Nothing in § 30-5-35 or the laws concerning recording generally impose a duty upon you to make a title search on property or otherwise check your records to verify the chain of title.

Although derivation clauses are mandatory and you do not have the duty to conduct a title search or otherwise verify title, § 30-5-35 does not exclude you from accepting deeds or mortgages which have derivation clauses attached thereto instead of on the face thereof. Preferably, such an attachment should be designated as being a "derivation clause." Even if the attachment does not use the terms "derivation clause," you may still accept the document if the attachments clearly set forth the elements of such a clause which include the name of the grantor and the recording date of the deed from that grantor. § 30-5-35. If those statutory elements are missing, you may decline to record the instrument. If such elements are present, you may accept the instrument for recording, and you need not verify the accuracy of the information therein.

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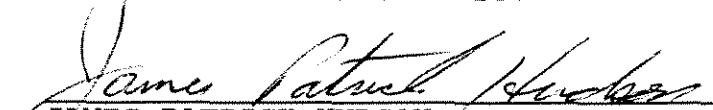
I realize that this letter may not encompass every circumstance with which you are presented. If you need further guidance or assistance, please let me know. I hope that this information will be of help to you.

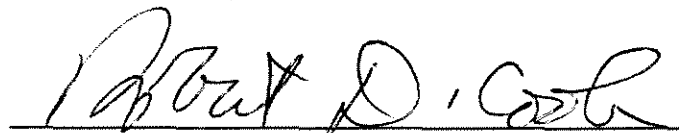
Yours very truly,

  
J. Emory Smith, Jr.  
Deputy Attorney General

JESjr:ppw

REVIEWED AND APPROVED BY:

  
JAMES PATRICK HUDSON  
Chief Deputy Attorney General

  
ROBERT D. COOK  
Executive Assistant for Opinions