

5292 February

# The State of South Carolina



## Office of the Attorney General

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January 12, 1994

The Honorable Cynthia B. Forte  
Register Mesne Conveyance  
Berkeley County  
223 N. Live Oak Drive  
Moncks Corner, SC 29461

Dear Ms. Forte:

You have requested the opinion of this Office as to whether you may record a release of mortgage through foreclosure which has been executed by a master without two witnesses. The conclusion of this Office is that two witnesses are not required under these circumstances.

Under S.C. Code Ann. § 29-3-780 (1991), an officer of a court making a sale of land pursuant to a decree of foreclosure is directed to record a release, cancellation and satisfaction of the lien in the form prescribed in § 29-3-790. The latter statute sets forth the form of this release and requires that it be signed by the officer, but it includes no requirements for witnesses. Giving these statutes their plain meaning (South Carolina Department of Highways and Public Transportation v. Dickinson, 288 S.C. 134, 341 S.E.2d 134 (1986)), leads to the conclusion that the execution of the release by the judicial officer, is sufficient without a witness. This conclusion is consistent with other methods of entering satisfaction under different circumstances which require the signatures of one but not two witnesses. § 29-3-330. Whether § 27-7-10 concerning the requirement of two witnesses for the conveyance of fee simple title would otherwise be applicable here need not be determined because §§ 29-3-780 and 29-3-790 are controlling as the more specific and more recent legislation. Yahnis Coastal, Inc. v. Stroh Brewery, 295 S.C. 243, 368 S.E.2d 64 (1988); Spartanburg County DSS v. Little, \_\_\_ S.C. \_\_\_, 420 S.E.2d 499 (1992). Moreover, this conclusion that witnesses are not required under these statutes is consistent with the fact that witnesses are not ordinarily required for the signature of a judge or a master on an order of a court.

*Request Letter*

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In conclusion, a release executed by an officer of the court in the form provided in § 29-3-790 may be recorded without the presence of two witnesses. If you need other information, please let me know.

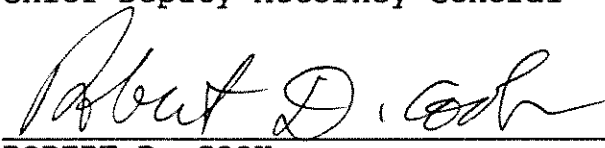
Yours very truly,

  
J. Emory Smith, Jr.  
Deputy Attorney General

JESjr:ppw

REVIEWED AND APPROVED BY:

  
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JAMES PATRICK HUDSON  
Chief Deputy Attorney General

  
\_\_\_\_\_  
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