

# The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE: 803-734-3636  
FACSIMILE: 803-253-6283

April 29, 1991

The Honorable Virginia T. Hafen  
Register of Mesne Conveyance  
366 N. Church Street  
Spartanburg, SC 29301

Dear Ms. Hafen:

You have requested the opinion of this Office as to the recording fee for an "extension and modification agreement." According to your information, your office clocks these agreements and indexes them as new instruments, makes a marginal notation, and cancels the document. You have also stated that opinions vary among the clerks of court as to the fees to be charged.

A previous opinion of this Office concludes that the fee for modifications of mortgages should be \$6.00 under S.C. Code Ann. § 8-21-310(3) (Supp. 1990). Ops. Atty. Gen. (March 5, 1991 - copy enclosed); see also, Ops. Atty. Gen. (July 18, 1990; June 5, 1987). This Office continues to be guided by a prior Opinion unless the prior Opinion "is clearly erroneous or the applicable law has changed." Ops. Atty. Gen. (October 3, 1986). Neither circumstance appears to be applicable here. That the larger fee of \$10.00 in paragraph 1 of § 8-21-310 applies to the original mortgage and that the smaller fee of \$6.00 in paragraph 3 applies to a subsequent instrument which "affects a single real estate mortgage" "unless it is part of the original instrument when initially filed" clearly indicates that the modification of a mortgage would be one that affects a single mortgage for which the fee would be \$6.00 under paragraph 3. See Ops. Atty. Gen. (July 18, 1990).

Your letter referenced a prior Tax Commission memorandum concerning former § 12-21-360(C) which provides for a documentary stamp tax on mortgages. The memorandum stated that certain loan modification agreements would be considered to be new mortgages under § 12-21-360 (repealed by Act No. 512, part II, section 7(g), 1984 Acts 2969); however, the treatment of documentary stamps on

THE HONORABLE VIRGINIA T. HAFEN

April 29, 1991

Page 2

modifications to mortgages under a statute that is now repealed would certainly not be controlling under the provisions of § 8-21-310 which specifically distinguishes instruments affecting mortgages from the original mortgages themselves.1/

If you have any questions or need additional information, please let me know.

Yours very truly,



J. Emory Smith, Jr.  
Assistant Attorney General

JESjr/rl

Enclosure

REVIEWED AND APPROVED BY:



JOSEPH D. SHINE  
Chief Deputy Attorney General



ROBERT D. COOK  
Executive Assistant for Opinions

---

1/ Unless a different legislative intent is indicated, the more specific statute is the one controlling a matter. See Criterion Insurance Co. v. Hoffman, 258 SC 282, 188 S.E.2d 459 (1972); Sutherland Statutory Construction, Vol. 2A § 51.05.