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THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

July 24, 1985

OPINION NO. 85-70 *P 173*

SUBJECT: Taxation & Revenue - Application Of  
Documentary Stamps To Deeds Executed By  
Masters-In-Equity.

SYLLABUS: A deed executed by a Master-In-Equity during  
a foreclosure proceeding is not subject to  
the documentary stamp tax.

TO: Mr. William R. Geddings, Jr.  
Director, Office Services Division

FROM: Ronald W. Urban *RW*  
Assistant Attorney General

QUESTION: Is a deed executed by a Master-In-Equity during  
a foreclosure proceeding subject to a documentary stamp tax?

APPLICABLE LAW: Article I, § 8 of the South Carolina  
Constitution; § 12-21-310 and § 12-21-380 of the South  
Carolina Code of Laws, 1976.

DISCUSSION:

There is no statutory authority for exempting, from the  
documentary stamp tax levied by § 12-21-380, a deed executed  
by a Master-In-Equity during a foreclosure proceeding.  
However, since the Master, as maker of the deed, is the  
party primarily responsible for any stamp tax due,<sup>1</sup> the  
levying of such a tax is precluded as an impermissible tax  
on the judiciary.

Article I, Section 8 of the South Carolina Constitution  
establishes the legislative, executive and judicial branches  
of government as separate and distinct powers. In Lewis v.  
The Florida Bar, Fla., 372 So.2d 1121 (1979) the Florida  
Supreme Court construed a very similar proviso in the  
Florida Constitution as prohibiting the levying of a  
documentary stamp tax on a promissory note executed by the  
Florida Bar. The Court reasoned that such a tax was a tax

<sup>1</sup> See § 12-21-310 and Investors Premium Corp. v. South  
Carolina Tax Commission, 260 S.C. 13, 193 S.E.2d 642 (1973).

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on the judiciary and thus violative of the separation of powers provision of its Constitution.

The rationale of the Florida Supreme Court is even more compelling when applied to a deed executed by a Master during a foreclosure proceeding. The tax levied in Lewis v. The Florida Bar was not a direct tax on the bar but was rather the legal liability of the lending institute. The lending institute merely passed the tax on to the bar as an expense. As previously stated, the tax due on a deed executed by a Master in South Carolina is the liability of the Master. As such it is a direct tax on the judiciary and in all likelihood is prohibited by Article I, Section 8 of the South Carolina Constitution.

CONCLUSION:

A deed executed by a Master-In-Equity during a foreclosure proceeding is not subject to the documentary stamp tax.

RWU/jws