

1980 WL 121215 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 12, 1980

*1 Mr. Robert N. King
Register Mesne Conveyance
County Office Building
Post Office Box 726
Charleston, South Carolina 29402

Dear Mr. King:

You have requested an opinion concerning the following four questions, which I quote from your letter of April 25, 1980:

1. Can I record a deed or other instrument executed in South Carolina which is not witnessed but is either acknowledged before a South Carolina notary or sworn to before a South Carolina notary by the person executing the instrument?
2. Can I record a deed or other legal instrument executed in South Carolina which is witnessed, but is not proven by the affidavit of a subscribing witness, but is acknowledged before a South Carolina notary or sworn to by the person executing it before a South Carolina notary?
3. Can I record a deed or other legal instrument which is witnessed by only one witness and which [is] proven by the affidavit of the one subscribing witness?
4. Are the rules for recording deeds and mortgages different from recording other legal instruments?

In order for a deed to be effective to convey title and to be recorded, it must meet the following statutory requirements:

1. It must contain the language (or substantially similar language) found in [§ 27-7-10, 1976 Code](#) of Laws, and must, according to that statute, 'be executed in the presence of and be subscribed by two or more credible witnesses . . .'
2. Prior to recording, it must meet the requirements of § 30-5-30, which are as follows:
'(1) The execution thereof shall be first proved by the affidavit of a subscribing witness to such instrument, taken before some officer within this State competent to administer an oath * * *;
(2) The Uniform Recognition of Acknowledgements Act shall be complied with; or
(3) The person executing it shall submit an affidavit subscribed to before a person authorized to perform notarial acts or by the Uniform Recognition of Acknowledgements Act that the signature on the deed or other instrument is his signature and that the instrument was executed for the uses and purposes stated therein.

Questions (1) and (3) involve possible defects in the attestation of the signature on the deed itself, i.e., when it is executed in the presence of only one witness or in the presence of no witnesses at all except a notary. These questions are answered by an article by Professor David Means, 'The Recording of Land Titles in South Carolina,' 10 S.C.L.Q. 346, 407-8, (1958), and by authorities cited therein:

Certain irregularities unquestionably must be regarded as material ones disqualifying an instrument for record. Thus the record of a deed or mortgage having only one witness . . . does not constitute constructive notice of the existence of such deed or mortgage.

In [Harper v. Barsh](#), 10 Rich.Eq. 149, 155 (1858), cited by Professor Means, Chancellor Wardlaw, speaking for the Court, held: I am of opinion that a mortgage of land, attested by one witness only, is incomplete in execution and not entitled to be recorded. (Emphasis added).

*2 The latter quotation seems entirely reasonable; if the recordation of an instrument does not serve to impart constructive notice, only confusion and misunderstanding would arise if the instrument were permitted to be recorded. It is accordingly the opinion of this Office that a deed or mortgage not attested by two witnesses should not be accepted for recordation.

Question (2) arises when the requirements of [§ 27-7-10](#) have been met, but the proof of execution required by [§ 30-5-30](#) is attempted to be supplied by acknowledgement before a South Carolina notary or by having the person who executed the deed attest to his signature before a South Carolina notary.

This Office has twice before issued opinions (No. 3495, 1973 Op.Atty.Gen. 88; No. 3990, 1975 Op.Atty. 64) that the Uniform Recognition of Acknowledgements Act permits the recognition of short-form acknowledgements which were made in another state, but does not authorize the use of such forms within South Carolina. The reasons for this conclusion are set forth in Opinion No. 3495, [supra](#). The General Assembly appears to have ratified the conclusion of Opinion No. 3495 when three months after that opinion's issuance, it enacted [§ 30-5-40](#). That statute validates the execution and acknowledgement of deeds within this State executed after May 11, 1972 (when [§§ 30-5-30\(2\)](#) and [30-5-30\(3\)](#) were enacted) and before June 22, 1973 (when [§ 30-5-40](#) itself was enacted). The purpose of [§ 30-5-40](#) appears to be to cure the effect of any misunderstanding to the effect that [§§ 30-5-30\(2\)](#) and [30-5-30\(3\)](#) were applicable to transactions within the State. By negative implication, [§ 30-5-40](#) indicates that after June 22, 1973, compliance with [§§ 30-5-30\(2\)](#) or [30-5-30\(3\)](#) for transactions within the state is insufficient. If the General Assembly had intended that the Uniform Act was to apply within the State, it had a clear opportunity in 1973 to say so; but that opportunity was declined. It is therefore the Opinion of this Office that in order for a deed whose execution is to be proven within the State to be recorded, the requirements of [§ 30-5-30\(1\)](#) must still be followed.

The final question is whether the rules for recording deeds and mortgages are different from those for recording other legal instruments. If the instrument concerns title to land, [§ 30-5-90](#) requires that it be proved according to [§ 30-5-30](#), already discussed. If no interest in land is involved, the answer to the question depends on the specific type of instrument involved. In this case, a partnership agreement is involved. The only statutory recording requirement which has been found for such instruments where land title is not involved is [§§ 39-13-10 et seq.](#) which provide that the clerk shall keep records of the names of owners of businesses which do business by some name other than that of the proprietor. No formalities are required for such recordation.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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