

1973 S.C. Op. Atty. Gen. 295 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3622, 1973 WL 21076

Office of the Attorney General

State of South Carolina

Opinion No. 3622

September 13, 1973

**\*1 Contracts for the purchase of cotton must be probated. They are not ‘security interests’ under the Uniform Commercial Code.**

Clerk of Court  
York, South Carolina

This is in reply to your letter of August 29, 1973, in which you have requested the opinion of this office on the following questions concerning the recording of certain executory contracts for the purchase of cotton.

You have asked whether the contracts should be filed as financing statements, and if not, in what book? The contracts, for which the only consideration is mutual promises to sell and buy cotton and for which no consideration has been advanced by the purchaser, are not security interests as contemplated in Chapter 9 of the Uniform Commercial Code. (It is assumed that the cotton is still in the possession of the farmer.) They should not be filed as financing statements. See Section 10–9–102 of the Code (Vol. 2A). Although it is not clear from the recording act in what book such an instrument should be recorded, it is suggested that you file the contracts in the miscellaneous book.

The other questions you raise are applicable to the recording act contained in Chapter 3 of Title 60 of the Code. Section 60–51 of the Code provides certain formal prerequisites to be met before any ‘instrument in writing can be recorded in this State.’ No instrument is to be recorded unless the execution thereof is proved by the affidavit of a subscribing witness taken before an officer competent to administer an oath.

The contracts must, therefore, be witnessed and probated if they are to be recorded. See [Dillon & Son Co. v. Oliver](#), 106 S. C. 410, 91 S. E. 304 (1917). The number of witnesses and corresponding probates will depend on whether the signatures of the parties are subscribed at the same time in the presence of the witness; that is to say, if one person is witness to both signatures, only one witness and probate is necessary. However, if the parties do not sign in the presence of the same witness, there must be a witness to each signature and separate probates.

John C. von Lehe  
Assistant Attorney General

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