



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

June 4, 1999

The Honorable Cynthia B. Forte  
Register of Deeds  
223 North Live Oak Drive  
Moncks Corner, South Carolina 29461

Dear Ms Forte:

You have asked for an opinion concerning the effect of S.C. Code Ann. §29-3-330 (Supp. 1998) concerning satisfactions of mortgages. This statute provides as follows, in paragraph (c):

[when a mortgage or other instrument referenced therein is] "...lost or destroyed it may be satisfied, either by the owner and holder of the instrument... by an instrument in writing...and in addition the person executing the satisfaction shall make an affidavit that he or the person he represents is at the time of the satisfaction a bona fide owner and holder of the mortgage.... The affidavit must be recorded with the satisfaction....The signature of the ....owner or holder may be proved in the manner provided above or also may be acknowledged [as provided in this statute].

A previous opinion of this Office had concluded that the recording officer should determine whether the mortgage satisfaction has been executed by the current holder of the mortgage (*Ops. Atty. Gen. No. 92-61 (October 20, 1992)*); however, since that opinion was issued, the addition of language to §29-3-330(c) regarding proof of the signature of the owner or holder, together with the existing language of that part, indicates a legislative intent that the recording officer may now rely upon the affidavit under the circumstances described in part (c) of that statute.<sup>1</sup> This conclusion is consistent with language in part (d) of §29-3-330 regarding instruments recorded in counterparts which is that

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<sup>1</sup> The "...primary function in interpreting a statute is to ascertain the intention of the legislature." *South Carolina Department of Highways and Public Transportation v. Dickinson*, 288 S.C. 134, 341 S.E. 2d 134 (1986). "Where the terms of a statute are clear and unambiguous, there is no room for interpretation and we must apply them according to their literal meaning." *Id.*

"...[u]pon presentation of the instrument of satisfaction, release or discharge, or a counterpart of it, the officer or his deputy having charge of the recording of instruments shall record same"<sup>2</sup>. Accordingly, the recording officer no longer must determine whether the satisfaction has been executed by the current holder when the instrument and affidavit comply with §29-3-330(c). Of course, the instrument and affidavit must be properly indexed. See §§29-3-350 (Supp. 1998) and 30-9-40 (1991).

This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

If you have further questions, please let me know.

Yours very truly,

  
J. Gregory Smith, Jr.

Assistant Deputy Attorney General

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<sup>2</sup> "In construing statutory language, the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction." *State v. Alls*, 500 S.E. 2d 781 (1998)