



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

March 30, 2004

The Honorable Elaine Bozman
Deputy Register Mesne Conveyance
County of Charleston
2 Courthouse Square
Charleston, South Carolina 29402-0726

Dear Ms. Bozman:

In a letter to this office you indicated that an attempt was made to record a surety bond pertaining to a mechanic's lien signed by a plaintiff with only a notary. It is my understanding that such bond was prepared pursuant to the provisions of S.C. Code Ann. Section 29-5-110 (Supp. 2003) which allows for the release of a mechanic's lien upon the filing of a written undertaking and security. Section 29-5-110 is silent as to any requirements regarding witnesses or acknowledgment of probate.

You indicated that it has always been the policy of your office to require two witnesses and an acknowledgment or probate. You referenced S.C. Code Ann. Section 30-5-30 (Supp. 2003) as support for such requirement. Such provision states:

Except as otherwise provided by statute, before any deed or other instrument in writing can be recorded in this State, it must be acknowledged or proved by the method described in (A) or (B):

(A)(1) the execution of the deed or other instrument must be first proved by the affidavit of a subscribing witness to the instrument, taken before some officer within this State competent to administer an oath...

(B) A deed or other instrument must be signed by the grantor, mortgagor, vendor or lessor and the signing must be acknowledged by the grantor, mortgagor, vendor, or lessor in the presence of two witnesses, taken before some officer in this State competent to administer an oath....

According to your letter, when the attorney attempted to record the referenced surety bond and your office referenced the requirements of Section 30-5-30, it was asserted that such provision applies only to real estate or conveyances.

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A prior opinion of this office dated November 3, 2000 referenced the requirements of Section 30-5-30 as to the prerequisites for recording of a power of attorney. Therefore, the applicability of Section 30-5-30 is apparently not limited to deeds or similar conveyances. In my opinion, you are correct in your interpretation regarding the applicability of Section 30-5-30 to a surety bond pertaining to a mechanic's lien inasmuch as such would come within the definition of "other instrument" as used in such provision.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General