

The State of South Carolina



Office of the Attorney General

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April 17, 1985

Suspended
9/25/85
by Attorney General
Medlock

The Honorable Robert N. King
The Register of Mesne Conveyances
2 Courthouse Square
Charleston, South Carolina 29401

Dear Mr. King:

You have requested the advice of this office as to whether two witnesses are required for powers of attorney filed in this State which have been executed either in this State or out-of-state. Unless such a power is "durable", two witnesses do not appear to be required. See Note 1. Durable powers require three witnesses.

Section 30-5-30 of the Code of Laws of South Carolina 1976 sets forth prerequisites to recording "...any deed or other instrument in writing...." None of these prerequisites require two witnesses to instruments that are recorded.

The above provisions set forth prerequisites for authenticating instruments. They do not set forth requirements for witnesses except as needed for authentication. Therefore, for example, these provisions do not change the special requirements that two persons witness the execution of deeds and mortgages. 1974-75 Ops. Atty. Gen., #3991. The witness requirements for deeds do not apply to powers of attorney because a power is not a conveyance of land in fee simple. See Section 27-7-10 of the Code. See also, Ops. Atty. Gen. (February 22, 1985). No other statute appears to require a particular number of witnesses for powers of attorney generally, except for the "durable" power requirements which are explained below. 1/ See §32-13-10 as amended. Therefore, unless the power

1/ To decide whether a power is durable, you must determine whether the power contains the following statutory language:

"This power shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing his own estate 'or similar words showing the intent of the principal that the authority conferred is exercisable notwithstanding his physical disability or mental incompetence..." Section 32-13-10 of the Code.

If the power contains the above quoted or similar language, it is durable.

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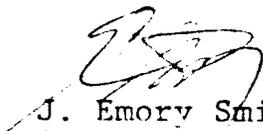
is durable, two witnesses do not appear to be required for powers and you must merely determine whether the prerequisites of §30-5-30 have been met.

Durable powers require three witnesses because the statute providing for them states that they must be "...executed and attested with the same formality and with the same requirements as to witnesses as a will." §32-13-10. Wills are required to be attested by three or more witnesses. Section 21-7-50 of the Code. Durable powers also must be "...probated and recorded in the same manner as a deed..." §32-23-10. The requirements for recording a deed are set forth in §30-5-30. See also, Collin, Lombard, Moses and Spitler, Drafting the Durable Power, Page 283 (1984).

In conclusion, no particular number of witnesses is required to record a power of attorney, but the power must comply with one of the above set forth methods for authentication. If the power is durable, three witnesses are required and the durable power must be authenticated as provided in §30-5-30.

If you have any questions, please let me know.

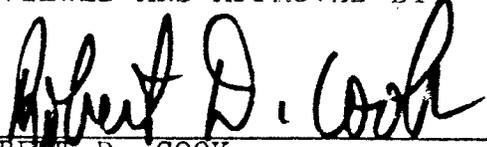
Yours very truly,



J. Emory Smith, Jr.
Assistant Attorney General

JESjr/srcj

REVIEWED AND APPROVED BY:



ROBERT D. COOK
EXECUTIVE ASSISTANT FOR OPINIONS