

1977 WL 37433 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 23, 1977

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Honorable Arthur F. Burton
Register of Mesne Conveyance for Charleston County

QUESTION PRESENTED:

Is an instrument such as the enclosed Amendment of Assignment of Leases and Rents entered into between VARIOUS PROPERTIES ASSOCIATES and NORTHWESTERN NATIONAL LIFE INSURANCE COMPANY properly executed as to enable it to be recorded even though there are no signatures of witnesses to the execution of the instrument appearing on the face of the instrument?

AUTHORITIES:

Section 30-5-30, Code of Laws of South Carolina, 1976:

Section 26-3-10, et seq., Code of Laws of South Carolina, 1976;

Act No. 1197, Acts and Joint Resolutions of the General Assembly of the State of South Carolina, 1972, p. 2374;

1972-1973, Ops. Att'y.Gen., No. 3495, p. 88.

DISCUSSION:

In response to the question concerning whether or not the attached copy of the Amendment of Assignment of Leases and Rents between Various Properties Associates and Northwestern National Life Insurance Company is properly executed so as to enable it to be recorded, it is the Opinion of this Office that it is. Section 30-5-30, Code of Laws of South Carolina, 1976, states in part that:

'Before any deed or other instrument in writing can be recorded in this State . . . (2) The Uniform Recognition of Acknowledgments Act shall be complied with; . . .' (Emphasis Added)

Therefore, a reference is made to the Uniform Recognition of Acknowledgments Act, Section 36-3-10, et seq., Code of Laws of South Carolina, 1976, as one of three prerequisites to be met before a written instrument can be recorded in this State.

The Uniform Recognition of Acknowledgments Act, Sections 26-3-10, et seq., supra, details the procedures to be met in order to achieve compliance with the Act, which is described more specifically in Act No. 1197 of the 1972 Acts and Resolutions of the General Assembly of South Carolina at Page 2374 as 'an act to provide for uniform recognition of acknowledgments executed outside the State.' Therefore, since the above-referenced Amendment of Assignment of Leases and Rents was executed

outside the State of South Carolina, compliance with the above Uniform Recognition of Acknowledgments Act would enable the document to be recorded in this State. See 1972-1973 Ops.Att'y.Gen., No. 3495, p. 54.

First, Section 26-3-20(1), Code of Laws of South Carolina, 1976, states that 'a notary public authorized to perform notarial acts in the place in which the act is performed' is a person within the definition of those persons' by whom notarial acts such as those done in this State may be performed outside this State. Section 26-3-30, Code of Laws of South Carolina, 1976, notes that '. . . the signature, rank or title and serial number, if any, of the person are sufficient proof of the authority . . .' of a notary public as described in Section 26-3-20(1) to perform a notarial act. It would appear from the acknowledgments taken before Grace M. Cavanaugh and Stuart M. Saft on Pages 3 and 4 of the above-referenced document that these two individuals are persons authorized to perform notarial acts within the Uniform Recognition of Acknowledgments Act.

*2 As to the form of acknowledgment concerning the Northwestern National Life Insurance Company executed by Ms. Cavanaugh in the above document, it appears that it is in compliance with Section 26-3-70(2), Code of Laws of South Carolina, 1976, which details the statutory short forms of acknowledgment for a corporation. Concerning the acknowledgment executed by Mr. Saft in the above-referenced document, it also appears to have been executed in such a manner so as to bring it in compliance with the Uniform Recognition of Acknowledgments Act in that there is compliance with Sections 26-3-40, 26-3-50, and 26-3-60, Code of Laws of South Carolina, 1976. Section 26-3-70, supra, while detailing specific forms of acknowledgment notes that 'the authorization of the forms in this Section does not preclude the use of other forms.'

Furthermore, there are no provisions in this Act necessitating that signatures of witnesses appear on the face of the document. Inasmuch as such are not expressly required by the Act, the failure to provide such would not prevent recording of such an instrument.

CONCLUSION:

Therefore, it is the Opinion of this Office that the above-referenced document may properly be recorded in this State even though there are no signatures of witnesses appearing on the face of the instrument.

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