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FILE NO. S-880

BUSINESS RECORDS AND INFORMATION:
Recording of Instruments

Honorable Frank Bonan
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Dear Mr. Bonan:

I have your letter wherein you request my opinion regarding section 9.3 of "AN ACT to revise the law in relation to recorders". (Ill. Rev. Stat. 1973, ch. 115, par. 9.3.) That section provides:

"No recorder shall record any instrument affecting title to real estate unless the name and address of the person who prepared and drafted such instruments is printed, typewritten or stamped on the face thereof in a legible manner, but the validity and effect of the record of any such instrument shall not be lessened or impaired by the fact that it does not comply with the provisions of this Section. An instrument complies with this Section if it contains a statement in substantially the following form:

'This instrument was prepared by
(Name) _____, (Address) _____.'
This Section does not apply to any
instrument executed before the effective
date of this Section, nor to the

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following: (a) a decree, order or judgment or writ of any court; (b) a will; (c) a death certificate; or (d) an instrument executed or acknowledged outside of this State."

Your specific question relates to the phrase "person who prepared and drafted such instruments". Specifically you inquire as to whether the recorder may accept an instrument where the instrument is shown to have been prepared by a domestic corporation, a foreign corporation, or a partnership.

In answer to your first question, an instrument prepared by a domestic corporation may be accepted by the recorder as being in compliance with section 9.3 of the Recorders Act. In Illinois it has been provided by statute that in construing statutes, "'person' or 'persons' as well as all words referring to or importing persons, may extend and be applied to bodies politic and corporate as well as individuals." (Ill. Rev. Stat. 1973, ch. 131, par. 1.05; McIntire v. Preston, 10 Ill. 48; Atchiston Topeka & Santa Fe Railway Co. v. Stamp, 290 Ill. 428.) The statutory use of the word "persons" to include corporations is so general that to hold that corporations are not included requires clear proof of legislative intent to exclude them. (Central Amusement Corp. v. District of Columbia, (Mun. Ct. App.

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D.C.), 121 A. 2d 865; 18 Am. Jur. 2d Corporations, sec. 20 (1965).) In the absence of any contrary indication it must be assumed that the legislature intended the word "persons" in the Recorders Act to encompass corporations as well as individuals. Therefore the recorder can accept an instrument for recording which was prepared by a corporation.

Having concluded that a domestic corporation may properly prepare an instrument for recording I reach the same conclusion for foreign corporations. The public policy of Illinois places domestic corporations and foreign corporations on the same basis. Section 103 of the Business Corporation Act (Ill. Rev. Stat. 1973, ch. 32, par. 157.103) provides in pertinent part:

"* * * A foreign corporation which shall have received a certificate of authority under this Act shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; * * *."

The general intent of this legislation is to eliminate any distinction in the treatment of domestic and foreign corporations which have complied with the Business Corporations Act. (cf. Freind & Co. v. Goldsmith & Seidel

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Co., 307 Ill. 45.) Once a foreign corporation is admitted to Illinois, it stands equal to and must be classified with, a domestic corporation of the same kind. (Hanover Fire Insurance Co. v. Harding, 274 U.S. 497, 71 L. Ed. 372, 47 S. Ct. 179 (1926).) Therefore, an instrument prepared by a foreign corporation must be accepted for recording.

Parenthetically, I would call your attention to the last sentence of section 9.3 of "AN ACT to revise the law in relation to recorders", supra. That sentence reads in part that: "This section does not apply to any instrument executed before the effective date of this section, nor to the following: (d) an instrument executed or acknowledged outside of this State." This portion of the statute in question might be applicable to certain documents prepared by foreign corporations.

Your third and final question relates to an instrument prepared by a partnership. The rules of statutory construction will again serve as an aid in answering your question. Section 1.03 of "AN ACT to revise the law in relation to the construction of the statutes" (Ill. Rev. Stat. 1973, ch. 131, par. 1.03) provides:

"Words importing the singular number may extend and be applied to several persons or things and words importing the plural number may include the singular."

Therefore an instrument may be in compliance with the Recorders Act even though it indicates that it was prepared by more than one person. In Illinois, a partnership is not a legal entity distinct from the individual members of which it is composed. (Lewis v. West Side Trust & Savings Bank, 337 Ill. 384; Abbott v. Anderson, 265 Ill. 285.) Section 9 of the Uniform Partnership Act (Ill. Rev. Stat. 1973, ch. 106 1/2, par. 9) provides in part:

"(1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the exception in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority."

It is apparent therefore that for the purposes of the Recorders Act the designation of a partnership as having prepared the instrument is sufficient. The issue is not whether the partnership will be liable on the instrument. The purpose of the statute in question is to identify the party preparing the document. Under that limited situation, the rules of statutory construction coupled with the legal nature of a partnership do not prohibit a partnership from indicating that it prepared the instrument for recording.

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Therefore, I am of the opinion that the recorder may accept instruments showing a firm or corporation as preparing the instrument since such documents comply with the provision of section 9.3 of "AN ACT to revise the law in relation to recorders". Ill. Rev. Stat. 1973, ch. 115, par. 9.3.

This opinion is not to be construed as being in any way inconsistent with the decision of the Illinois Supreme Court in the case of Chicago Bar Association v. Quinlan & Tyson, Inc., 34 Ill. 2d 116, 122, concerning the unauthorized practice of law.

Very truly yours,

A T T O R N E Y G E N E R A L