

## Real property, unacknowledged agreement, recording

**Number:** AGO 79-57

**Date:** January 16, 1998

**Subject:**

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### CLERK OF CIRCUIT COURT--UNACKNOWLEDGED AGREEMENT CONCERNING REAL PROPERTY CANNOT BE RECORDED IN OFFICIAL RECORDS

To: Jed Pittman, Clerk, Circuit Court, Dade City

Prepared by: Jerald S. Price, Assistant Attorney General

#### QUESTION:

Is a trust agreement executed pursuant to s. 689.05, F. S., but not witnessed or acknowledged, entitled to be recorded in the official records by the clerk of the circuit court?

#### SUMMARY:

A "trust agreement" concerning real property within the scope of s. 695.03, F. S., which has not been acknowledged by the executing party or proved by a subscribing witness as required by statute, is not entitled to be recorded in the official public records.

First, I would note that s. 689.05, F. S., which you cited in your question, is a statute of frauds setting forth requirements for the validity of "declarations and creations of trust and confidence of or in any messuages, lands, tenements or hereditaments . . ." That section has nothing to do with entitlement to recordation in the official records.

However, because of your reference to s. 689.05, F. S., I assume that the trust agreement to which you refer concerns real property, within the scope of s. 695.03, F. S., which does concern entitlement to recordation and which provides:

"To entitle any instrument concerning real property to be recorded, the execution must be acknowledged by the party executing it or the execution must be proved by a subscribing witness to it before the officers and in the form and manner following . . ."

Subsections (1), (2), and (3) of s. 695.03, F. S., go on to set forth those persons and officials before whom the executing party may make acknowledgment or before whom the execution may be proved by a subscribing witness. It is this acknowledgment requirement in s. 695.03, and not those provisions concerned with the validity of the instrument (such as s. 689.05, F. S.), which determines the instrument's *entitlement to recordation*. See AGO 049-75, February 24, 1949, Biennial Report of the Attorney General, 1949-1950, p. 562; AGO 070-43; and *Atlantic Land & Improvement Co. v. Lee*, 112 So. 549 (Fla. 1927).

Therefore, under the above-stated assumption, your question is answered in the negative. That is, a "trust agreement" concerning real property within the scope of s. 695.03, F. S., which has not been acknowledged by the executing party or proved by a subscribing witness as required by s. 695.03, is not entitled to be recorded in the official public records.