Commissioner of Deeds

Number: INFORMAL

Date: October 09, 2009

Mr. Robert Koehler
Commissioner of Deeds for the
State of Florida in the Bahamas
331 Windwood Oaks Drive #101
Tampa, Florida 33613-2068

Dear Mr. Koehler:

Thank you for contacting the Florida Attorney General's Office regarding the duties and responsibilities of commissioners of deeds within foreign countries. Attorney General McCollum has asked me to respond to your letter.

Section 695.03, Florida Statutes, provides that "[t]o entitle any instrument concerning real property to be recorded, the execution must be acknowledged by the party executing it, proved by a subscribing witness to it, or legalized or authenticated by a civil-law notary or notary public who affixes her or his official seal, before the officers and in the form and manner [provided by this statute.]" If the acknowledgment, legalization, authentication, or proof is made *in a foreign country*, the statute then provides that it may be made before a commissioner of deeds. This statute merely provides the requirements for executing a valid legal document concerning real property when execution of the document occurs in a foreign country. The statute does not provide substantive powers and duties for a commissioner of deeds.

Part IV, Chapter 721, Florida Statutes, is entitled "Commissioner of Deeds." Again, the legislatively expressed purpose for this part is to provide for the appointment of commissioners of deeds to take acknowledgments, proofs of execution, and oaths "outside the United States" in connection with timeshare transactions. Section 721.97, Florida Statutes, provides:

"The Governor may appoint commissioners of deeds to take acknowledgments, proofs of execution, or oaths in any foreign country, in international waters, or in any possession, territory, or commonwealth of the United States *outside the 50 states*. The term of office is 4 years. Commissioners of deeds shall have authority to take acknowledgments, proofs of execution, and oaths in connection with the execution of any deed, mortgage, deed of trust, contract, power of attorney, or any other writing to be used or recorded in connection with a timeshare estate, personal property timeshare interest, timeshare license, any property subject to a timeshare plan, or the operation of a timeshare plan located within this state; provided such instrument or writing is executed outside the United States. Such acknowledgments, proofs of execution, and oaths must be taken or made in the manner directed by the laws of this state, including but not limited to s. 117.05(4), (5)(a), and (6), Florida Statutes 1997, and certified by a commissioner of deeds. The certification must be endorsed on or annexed to the instrument or writing aforesaid and has the same effect as if made or taken by a notary public licensed in this state." (e.s.)

The powers and duties of commissioners of deeds are limited and specifically prescribed by statute. The office of commissioner of deeds is legislatively created and the holders of that office may not extend their powers beyond those which the Legislature has specifically granted.

As discussed above, a commissioner of deeds is appointed by the Governor to act in a foreign county as a representative of this state. I note that your address is within the State of Florida and I am enclosing several Attorney General Opinions expressing this office's opinion that a commissioner of deeds for purposes of section 695.03(3), Florida Statutes, must actually reside in the foreign country where an acknowledgment of an instrument concerning real property located in Florida is to be taken by such commissioner.

If you have additional questions relating to your position as Commissioner of Deeds for the State of Florida in the Bahamas, you may wish to contact the Governor's Office for assistance. As a gubernatorial appointee, that office may be able to provide you with further direction regarding your official actions.

I trust that these informal comments will be of assistance to you.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tsh

Enclosures: Ops. Att'y Gen. Fla. 84-53 (1984) and 81-77 (1981).