**South Carolina General Assembly**

124th Session, 2021-2022

**H. 3789**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. W. Newton, Erickson, Bradley, Hyde and Bernstein

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Introduced in the House on February 2, 2021

Currently residing in the House Committee on **Judiciary**

Summary: Deed and mortgage, derivation clause

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/2/2021 House Introduced and read first time ([House Journal‑page 46](file:///h:\hj\20210202.docx))

2/2/2021 House Referred to Committee on **Judiciary** ([House Journal‑page 46](file:///h:\hj\20210202.docx))

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**VERSIONS OF THIS BILL**

[2/2/2021](file:///p:\pprever\2021-22\3789_20210202.docx)

**A** **BILL**

TO AMEND SECTION 30‑5‑35, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DERIVATION CLAUSE REQUIREMENT ON A DEED AND MORTGAGE, SO AS TO REQUIRE ALL MORTGAGES EXECUTED AFTER JUNE 1, 2021, TO INCLUDE A CLAUSE SETTING FORTH THE NAME OF THE PARTY WHO PREPARED THE MORTGAGE OR THE ATTORNEY LICENSED IN SOUTH CAROLINA WHO ASSISTED IN THE CLOSING OF THE INSTRUMENT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 30‑5‑35 of the 1976 Code is amended to read:

“Section 30‑5‑35. ~~(a)~~(A) All deeds conveying an interest in land and all mortgages of real estate executed after July 1, 1976, must include a derivation clause in the property description and there must be inscribed on the deed or mortgage the mailing address of the grantee or mortgagee. When the grantor’s or mortgagor’s title was acquired by deed, the derivation clause must include the name of the grantor and the recording date of that deed. However, when the deed of derivation has been simultaneously executed and delivered and has not then been recorded it is sufficient to set forth in the deed or mortgage the name of the grantor of the deed of derivation and its date and that it is to be recorded. When the grantor’s or mortgagor’s title was obtained by inheritance or devise, the derivation clause must include the name of the person from whom the title was acquired, the approximate date of acquisition, and, in the case of property acquired under a probated will or administered estate, the probate court in which such estate was filed. However, a derivation clause is not required on a deed or mortgage of property devoted to a utility or railroad purpose of any private or public utility or railroad. Further, a derivation clause is not required on a quitclaim or non‑warranty deed of real property.

A deed or mortgage of real estate executed after June 1, 2021, must identify the preparer of the instrument and provide his contact information or an attorney licensed to practice in South Carolina assisting with the closing of the instrument in order to be recorded.

~~(b)~~(B) A clerk of court or register of deeds ~~shall~~ may not record any deed or mortgage after July 1, 1976, unless it contains a derivation clause and preparer’s information as prescribed in subsection ~~(a)~~ (A); provided, however, that ~~he may record a deed or mortgage without such clause upon a showing satisfactory to him that the necessary information for such clause was not available~~ upon a showing satisfactory to the clerk of court or register of deeds that the derivation clause or identifying and contact information of the preparer or an attorney licensed to practice in South Carolina assisting with the closing of the instrument is not available, the clerk of court or register of deeds may record the deed or mortgage.

~~(c)~~(C) The provisions of this section are intended to be regulatory in nature and will not affect the legality, force, effect or record notice of any instrument recorded in violation ~~hereof~~ of this section.”

SECTION 2. This act takes effect upon approval by the Governor.

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