

OPINION NO. 91-033**Syllabus:**

R.C. 317.11 requires the signature of any person, including a witness, who signs an "instrument by which title to real estate or personal property or any interest therein or lien thereon, is conveyed, created, encumbered, assigned, discharged, canceled or otherwise disposed of" to be legible or, if illegibly written, to be identified by an affidavit or by having the name legibly printed, typewritten or stamped upon the instrument.

To: Alan R. Mayberry, Wood County Prosecuting Attorney, Bowling Green, Ohio
By: Lee Fisher, Attorney General, July 15, 1991

I have before me your request for an opinion concerning the application of R.C. 317.11 to the signatures of witnesses to documents presented for recording by the county recorder. Specifically, you have asked "[w]hether witness signatures on documents, which are illegibly written, need to have their names typed or printed immediately beneath their signatures" before the recording of the documents.

The county recorder is statutorily charged with the duty to record "all deeds, mortgages, plats, or other instruments of writing required or authorized to be recorded, presented to him for that purpose." R.C. 317.13; *see also* R.C. 317.08 (listing various instruments of writing required or authorized to be recorded, including deeds, mortgages, plats, leases and liens); R.C. 317.09 (recording of notices of federal tax liens). The county recorder's duties are, however, to be exercised in the manner prescribed in R.C. Chapter 317. *See, e.g.*, R.C. 317.111 (an instrument to be recorded must indicate the person who, or the governmental agency which, prepared the instrument); R.C. 317.112 (standards of legibility for the document).

R.C. 317.11, which addresses illegible signatures, states, in pertinent part:

No instrument by which the title to real estate or personal property or any interest therein or lien thereon, is conveyed, created, encumbered, assigned, discharged, canceled or otherwise disposed of, shall be received for record of filing by the county recorder, if the signatures of the persons signing such instrument are illegibly written, unless the name of each person who in any capacity signed such instrument, and whose written signature is illegible, is legibly printed, typewritten, or stamped upon such instrument immediately beneath the signature of such person. The recorder shall receive any such instrument for record or filing, although it does not comply with this paragraph, if the name of each such person appears elsewhere in the instrument legibly printed, typewritten, or stamped, or if there is written on or attached to the instrument, for record, an affidavit of some person having personal knowledge of the facts, which affidavit states the correct name of the person whose signature was illegibly written and whose name was not printed, typewritten, or stamped thereon. (Emphasis added.)

Thus, R.C. 317.11 requires persons signing, in any capacity, an instrument enumerated therein, to sign legibly and prohibits the county recorder from receiving an instrument with illegible signatures for filing. The only exception to this requirement is when the alternative of a legible identification of the signature is used, either beneath the signature, elsewhere in the instrument or in an attached affidavit.

The question of whether a witness to an instrument required by R.C. 317.11 to have legible signatures is a "person...in any capacity," as that term is used in R.C. 317.11, is at the root of your inquiry. Absent a statutory definition, a term used in a statute should be accorded its natural, literal, common or plain meaning. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983). "Capacity" refers to the "position in which one functions; role." *American Heritage Dictionary* 236 (2d ed. 1982). "Capacity," as used in R.C. 317.11, therefore, would refer to the role or function in which any person signs an instrument. Inasmuch as R.C. 5301.01 requires that deeds, mortgages, land contracts, and leases contain the signatures of two witnesses, the signature of a witness is, thus, statutorily necessary before a deed, mortgage, land contract or lease may be accorded sufficient legal recognition to be received for recording by a county recorder. Given this statutory prerequisite, a witness to an instrument presented for recording under R.C. 317.11 functions in a statutory capacity.

R.C. 317.11 refers throughout to the persons signing an instrument as a single class. No division of signatories into groups is made by R.C. 317.11. Furthermore, no apparent reason for a disparate treatment of possible categories of those persons signing instruments in different capacities is suggested by the

statutory language. Where a statute uses the word "any" to modify a noun without selection, distinction or limitation, the intent is that the noun modified by "any" (here, that noun is "capacity") be treated as a whole class without division into smaller classes, and "any" may mean "every" in that context. See *Motor Cargo, Inc. v. Board of Township Trustees of Richfield Township*, 52 Ohio Op. 257, 259, 117 N.E.2d 224, 227 (C.P. Summit County 1953). Therefore, "any" modifying "capacity" in R.C. 317.11 should be properly read to mean "every."

Moreover, "any" may be equated to "every" where the statute uses mandatory language. 1990 Op. Att'y Gen. No. 90-085; 1990 Op. Att'y Gen. No. 90-050. The compulsory nature of R.C. 317.11 is apparent from the language which it employs: "No instrument...*shall* be received for record." (Emphasis added.) Because the statute is a prohibition to recording an instrument in which illegible signatures are present, the recorder is granted no discretion in the determination to record such a document. R.C. 317.11, thus, is not discretionary in nature, and the scope of R.C. 317.11 includes every signature that is illegible.

Based upon the foregoing, you are hereby advised that it is my opinion that R.C. 317.11 requires the signature of any person, including a witness, who signs an "instrument by which title to real estate or personal property or any interest therein or lien thereon, is conveyed, created, encumbered, assigned, discharged, canceled or otherwise disposed of" to be legible or, if illegibly written, to be identified by an affidavit or by having the name legibly printed, typewritten or stamped upon the instrument.