CHAPTER 7

Form and Execution of Conveyances

**SECTION 27‑7‑10.** Form of conveyance of fee simple; witnesses.

The following form or purport of a release shall, to all intents and purposes, be valid and effectual to carry from one person to another or others the fee simple of any land or real estate if it shall be executed in the presence of and be subscribed by two or more credible witnesses:

“The State of South Carolina.

“Know all men by these presents that I, A B, of \_\_\_\_\_\_\_\_\_\_, in the State aforesaid, in consideration of the sum of \_\_\_ dollars, to me in hand paid by C D of \_\_\_\_\_\_\_\_\_\_ County, State of \_\_\_\_\_\_\_\_\_\_, the receipt of which is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell and release unto the said C D all that (here describe the premises), together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto said C D, his heirs and assigns, forever. And I do hereby bind myself, my heirs, executors, and administrators, to warrant and forever defend all and singular said premises unto said C D, his heirs and assigns, against myself and my heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

“Witness my hand and seal this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_ in the year of our Lord \_\_\_\_\_\_\_\_\_\_ and in the \_\_\_ year of the independence of the United States of America. “\_\_\_\_\_\_\_\_\_\_ [L.S.]”

HISTORY: 1962 Code Section 57‑251; 1952 Code Section 57‑251; 1942 Code Section 8694; 1932 Code Section 8694; Civ. C. ‘22 Section 5216; Civ. C. ‘12 Section 3453; Civ. C. ‘02 Section 2367; G. S. 1775; R. S. 1886; 1795 (5) 255; 1899 (23) 48; 1936 (39) 1301.

CROSS REFERENCES

Name in which real estate acquired, conveyed or mortgaged by trustees of business trust, see Section 33‑53‑20.

Requirement that instrument transferring property used for hazardous waste storage or disposal contain notice of such use, see Section 30‑5‑36.

Library References

Deeds 29.

Westlaw Topic No. 120.

C.J.S. Deeds Section 34.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Covenants Section 6, by Deed.

S.C. Jur. Covenants Section 28, Covenants of Title.

S.C. Jur. Covenants Section 30, Common Law Background.

S.C. Jur. Covenants Section 31, Documents Used to Create‑ General Warranty Deed.

S.C. Jur. Covenants Section 32, Language Creating a Covenant of Title.

S.C. Jur. Covenants Section 38, Nature of Covenant.

S.C. Jur. Covenants Section 41, Manner Created.

S.C. Jur. Covenants Section 43, Nature of Covenant.

Forms

South Carolina Legal and Business Forms Section 8:1 , Legal Principles.

South Carolina Legal and Business Forms Section 8:4 , Checklist‑Drafting Deed.

South Carolina Legal and Business Forms Section 8:5 , General Warranty Deed‑Individual to Individual.

South Carolina Legal and Business Forms Section 9:1 , Legal Principles.

South Carolina Legal and Business Forms Section 11:1 , Legal Principles.

LAW REVIEW AND JOURNAL COMMENTARIES

Delivery of Deeds in South Carolina. 20 S.C. L. Rev. 299.

The Effect of a Conflict Between the Granting and Habendum Clauses in Deeds in South Carolina. 10 SC LQ 431.

The Fee Simple Conditional in South Carolina. 18 S.C. L. Rev. 476.

The Recording of Land Titles in South Carolina (Herein of Bona Fide Purchase of Land): A Title Examiner’s Guide. 10 SC LQ 346.

“Words of Inheritance in Deeds of Land in South Carolina: A Title Examiner’s Guide,” 5 SC LQ 313 (1953).

Attorney General’s Opinions

A derivation clause is not legally sufficient if it does not include the name of the prior grantor and the recording date of that deed; the same derivation clause that appears on the deed must be inscribed on the mortgage; if separate tracts were derived in separate conveyances, each tract must have its own derivation clause; the address of the grantee or mortgagee must appear on a part of the deed which will be recorded. 1975‑76 Op. Atty Gen, No. 4385, p 221.

Two witnesses are still required to record deeds and mortgages when acknowledgments are used instead of affidavits. 1974‑75 Op. Atty Gen, No. 3990, p 64.

NOTES OF DECISIONS

In general 1

Burden of proof 6

Easements and rights of way 5

Equitable mortgages 10

Form 2

Negligence actions 9

Quitclaim deeds 4

Restrictive covenants 8

Review 11

Title companies 7

Witnesses 3

1. In general

Cited in Groce v Benson (1933) 168 SC 145, 167 SE 151. Seale Motor Co. v Stone (1950) 218 SC 373, 62 SE2d 824, 25 ALR2d 1118.

As to warranty, see Lorick v Hawkins (1845) 30 SCL 417. Jeter v Glenn (1856) 43 SCL 374. Evans v McLucas (1879) 12 SC 56. Lessly v Bowie (1887) 27 SC 193, 3 SE 199.

As to when covenants to stand seized to use are effectual to convey land, see Craig v Pinson (1840) 25 SCL 272. Chancellor v Windham (1843) 30 SCL 161. Kinsler v Clarke (1844) 30 SCL 170. Dinkins v Samuel (1856) 44 SCL 66.

A grantor seeking to include all common law covenants of title may use the statutory language to carry out this effect, but the statute stating form of deed does not preclude the grantor from using other warranty language in a deed. Bennett v. Investors Title Ins. Co. (S.C.App. 2006) 370 S.C. 561, 635 S.E.2d 660. Covenants 38

General warranty deed embraces all of the following five covenants usually inserted in fee simple conveyances by English conveyors: (1) the seller is seized in fee; (2) he has a right to convey; (3) the purchaser, his heirs and assigns, shall quietly enjoy the land; (4) the land is free from all encumbrances; and (5) for further assurances. Bennett v. Investors Title Ins. Co. (S.C.App. 2006) 370 S.C. 561, 635 S.E.2d 660. Covenants 47

A general warranty deed embraces all of the following five covenants usually inserted in fee simple conveyances by English conveyors: (1) that the seller is seized in fee, (2) that he has a right to convey, (3) that the purchaser, his heirs and assigns, shall quietly enjoy the land, (4) that the land is free from all encumbrances, and (5) for further assurances; the first and second covenants have the same effect as the third and fourth covenants. Black v. Patel (S.C.App. 2002) 352 S.C. 76, 572 S.E.2d 295, rehearing denied, certiorari granted, affirmed as modified 357 S.C. 466, 594 S.E.2d 162. Covenants 47

Restrictive covenants on use of property may be created in express terms or by implication, but where it is asserted that it arises by implication, the implication must be “plain and unmistakable.” Bomar v. Echols (S.C. 1978) 270 S.C. 676, 244 S.E.2d 308. Covenants 1; Covenants 20

Court correctly admitted parol evidence to remove latent ambiguity created by 1935 deed conveying specifically described properties and also other rights, titles, and interests alleged to include tract of land in question. Sales Intern. Ltd. v. Black River Farms, Inc. (S.C. 1978) 270 S.C. 391, 242 S.E.2d 432.

As to feoffment with livery of seizin, see Dehon v. Redfern (S.C. 1838).

2. Form

This form is not indispensable, any form of words is sufficient if the intention to convey can be ascertained and there be a seal, two witnesses, and description of the property. Lorick & Lowrance v McCreery (1884) 20 SC 424. Navassa Guano Co. v Richardson (1887) 26 SC 401, 2 SE 307. Sally v Gunter (1860) 47 SCL 72.

The words “heirs and assigns” are necessary to convey the whole fee. Lorick & Lowrance v McCreery (1884) 20 SC 424. McMichael v McMichael (1898) 51 SC 555, 29 SE 403.

Form of bargain and sale not invalidated by this section. Sanders v Hartzog (1876) 6 SC 479. Lorick & Lowrance v McCreery (1884) 20 SC 424.

Because tidelands are held by the state in public trust, a grant of private ownership must contain specific language, either in the deed or on the plat, showing that the grant was intended to go below the high water mark. Lowcountry Open Land Trust v. State (S.C.App. 2001) 347 S.C. 96, 552 S.E.2d 778. Water Law 2679

Court properly held that 1935 deed conveying property from one school district to another did not convey 6,000 acre tract in addition to tracts specifically described, where record revealed no intention to convey or receive tract, and Gable continued to use land until it was conveyed to respondents’ predecessor in 1946. Sales Intern. Ltd. v. Black River Farms, Inc. (S.C. 1978) 270 S.C. 391, 242 S.E.2d 432.

Clause in deed granting property to school district for sole use and benefit of school, containing no provision for reverter or re‑entry, was declaratory of purpose only, and title to property could not be rendered unmarketable on that basis. Sales Intern. Ltd. v. Black River Farms, Inc. (S.C. 1978) 270 S.C. 391, 242 S.E.2d 432.

Court properly held that deed conveyed only land specifically described, and did not convey any of subject property, since county records showed that alleged grantees never paid taxes on subject land, there was testimony that they attempted to buy tract at same time they purchased specifically described tracts, and there was no evidence that they ever claimed title to subject property. Sales Intern. Ltd. v. Black River Farms, Inc. (S.C. 1978) 270 S.C. 391, 242 S.E.2d 432.

Where granting clause of deed contained no words of inheritance and thus by implication granted life estate only, habendum containing traditional words of inheritance had effect of enlarging life estate conveyed by granting clause into fee simple. Wayburn v. Smith (S.C. 1977) 270 S.C. 38, 239 S.E.2d 890. Deeds 124(2)

Where purported deed was on a printed form which failed to complete the habendum clause, the clause was not operative. McLaurin v. McLaurin (S.C. 1975) 265 S.C. 149, 217 S.E.2d 41.

Where a deed contained no words of inheritance in a granting clause and no completed habendum clause, but did contain words of inheritance in the warranty clause, the uncompleted habendum clause could not be considered in determining the nature and extent of the estate conveyed. McLaurin v. McLaurin (S.C. 1975) 265 S.C. 149, 217 S.E.2d 41. Deeds 124(1)

It is a settled, legal rule of construction of common‑law deeds in this State that words of inheritance in the granting or habendum clauses are necessary to convey a fee and that words of inheritance which appear only in the warranty cannot supply the deficiency; an estate for the life of the grantee results. Grainger v. Hamilton (S.C. 1955) 228 S.C. 318, 90 S.E.2d 209. Deeds 124(1); Deeds 129(2)

The form prescribed by this section to convey fee simple title contemplates that only the habendum shall contain the definitive terms whereby the estate is created and limited. Creswell v. Bank of Greenwood (S.C. 1947) 210 S.C. 47, 41 S.E.2d 393. Deeds 124(1)

Property must be sufficiently described to show intention to convey. Navassa Guano Co. v. Richardson (S.C. 1887) 26 S.C. 401, 2 S.E. 307.

3. Witnesses

Two witnesses are necessary. Allston v Thompson (1940) 25 SCL 271. Craig v Pinson (1840) 25 SCL 272. Jones v Crawford (1841) 26 SCL 373. Young v Young (1887) 27 SC 201, 3 SE 202. Little v White (1888) 29 SC 170, 7 SE 72. Navassa Guano Co. v Richardson (1887) 26 SC 401, 2 SE 307.

Deed was not entitled to be recorded because of facial defect, which was that it contained signature of only one witness; therefore recording of deed did not constitute notice of its existence. Leasing Enterprises, Inc. v. Livingston (S.C.App. 1987) 294 S.C. 204, 363 S.E.2d 410.

It is not necessary that the witnesses actually sign their names in the presence of the grantor, or that they sign in the presence of each other. It is sufficient if the grantor executes and delivers the instrument in the presence of one subscribing witness, and afterwards acknowledges to the other witness his execution and delivery of the deed, such other witness then subscribing his name. Hunt v. Smith (S.C. 1943) 202 S.C. 129, 24 S.E.2d 164. Deeds 47

While this section provides that in order for a deed to be valid and effectual to carry the fee simple, it shall be executed in the presence of two or more credible witnesses, absence of witnesses does not void deed because there are no such words in this section as “or else they shall be utterly void or of no effect.” Farmers’ Bank & Trust Co. v. Fudge (S.C. 1919) 113 S.C. 25, 100 S.E. 628.

The subscribing witness who shall make the oath must swear to the whole execution, which is that the maker signed the instrument and that each witness signed it. Arthur v. Hollowell (S.C. 1919) 111 S.C. 444, 98 S.E. 202.

Adverse possession for ten years under deed with one witness may cure the defect. Lyles v. Kirkpatrick (S.C. 1878) 9 S.C. 265.

4. Quitclaim deeds

Although the tax title is of a quitclaim‑deed nature, it has a legal effect: it signifies that title has been conveyed. Watson, Ex parte (S.C. 2003) 356 S.C. 432, 589 S.E.2d 760. Abstracts Of Title 1

Quitclaim deed is a proper mode of conveying fee. Martin v. Ragsdale (S.C. 1905) 71 S.C. 67, 50 S.E. 671.

5. Easements and rights of way

United States did not reserve to itself any interest in right of way granted to railroad under the General Railroad Right‑of‑Way Act over an 83‑acre parcel of land, when it granted the land to property owners through a land patent conveying fee simple title “subject to those rights for railroad purposes” that had been granted to the railroad, and, thus, the railroad had an easement in its right of way over the conveyed land, such that following the railroad’s abandonment of the right of way, the land became unburdened by the easement. Marvin M. Brandt Revocable Trust v. U.S., 2014, 134 S.Ct. 1257, 188 L.Ed.2d 272, on remand 559 Fed.Appx. 717, 2014 WL 1760357. Public Lands 88(2); Railroads 82(5)

Homeowner’s easement for use of neighboring lot with lake access was not limited to ingress and egress to the lake; homeowner’s deed specifically stated she and her family had an easement for the use of the lot, and nothing in the language of her deed limited her use only to access. Snow v. Smith (S.C.App. 2016) 416 S.C. 72, 784 S.E.2d 242. Easements 51

Use of lot with lake access was limited to ingress and egress on the driveway and ramp for group of neighboring homeowners whose deeds did not expressly grant them an easement for use of the lot; deeds either specifically granted them access to lake without mentioning the lot or made no mention of an easement at all, document governing neighborhood restrictions made no mention of the lot, another neighboring homeowner’s deed specifically granted access to use of the entire lot, and only access of the driveway and ramp was necessary to access the lake. Snow v. Smith (S.C.App. 2016) 416 S.C. 72, 784 S.E.2d 242. Easements 51

Property owner has an easement for access to and from any public road that abuts his property, regardless of whether he has access to and from an additional public road, and property owner also has an easement for access to and from the public road system. South Carolina Dept. of Transp. v. Powell (S.C.App. 2015) 415 S.C. 299, 781 S.E.2d 726, rehearing denied. Highways 85

Reference to plat in paragraph of deed describing property owner’s land, which plat depicted the land and contained notation “50’ road” outside land’s border on neighboring property, did not warrant presumption of easement in favor of owner over alleged road on neighboring property; deed referenced the plat not for purpose of granting an easement over road depicted within, but to show the metes and bounds of owner’s land. Gooldy v. Storage Center‑Platt Springs, LLC (S.C.App. 2015) 415 S.C. 287, 781 S.E.2d 720, rehearing denied, certiorari granted. Deeds 112(2); Easements 36(1)

Evidence surrounding initial conveyance of land between prior owners, one of which had owned both the land conveyed as well as neighboring property, was insufficient to demonstrate that prior owners intended to create easement over road on the neighboring property, as required for existence of implied easement over the road in favor of subsequent owner of the land; general partner of one of the prior owner’s testified that there was no intention to convey property outside land’s boundary lines, other prior owner testified that he did not receive an express or implied easement over neighboring property, and deed’s reference to plat that contained notation regarding the road did not demonstrate intent to create easement, but was used to describe metes and bounds of the land. Gooldy v. Storage Center‑Platt Springs, LLC (S.C.App. 2015) 415 S.C. 287, 781 S.E.2d 720, rehearing denied, certiorari granted. Easements 36(3)

Owner of land‑locked tract of land could not show unity of title necessary to establish easement of necessity over adjoining neighbor’s land; earlier owner’s holdings of land‑locked tract in fee simple and of adjoining land as tenant in common did not make him absolute owner of adjoining tract. Kennedy v. Bedenbaugh (S.C. 2002) 352 S.C. 56, 572 S.E.2d 452. Easements 18(4)

To establish a reciprocal negative easement, that is a restrictive covenant arising by implication, there must be (1) a common grantor, (2) a designation of the land or tract subject to restrictions, (3) a general plan or scheme of restriction and existence for the designated land or tract, and (4) the restrictive covenants must run with the land. Bomar v. Echols (S.C. 1978) 270 S.C. 676, 244 S.E.2d 308. Covenants 84

Where land conveyed is surrounded by grantor’s land, the law presumes, as in indicated by the form of deed set forth in this section, that the grantor intended to grant all rights essential to the enjoyment of the premises conveyed, including a right of way. Brasington v. Williams (S.C. 1927) 143 S.C. 223, 141 S.E. 375.

Under South Carolina law, written minutes of a meeting of partnership which purported to convey an ingress and egress easement over partnership property to an adjacent parcel failed to sufficiently describe the portion or parcel of the servient estate to be affected by the easement, in action brought by former partner alleging breach of the easement agreement, even though the partnership only owned one parcel of land at the time of the writing, where information on the partnership’s ownership of other property was extrinsic to the writing claimed to have created the easement. Rogers v. River Hills Ltd. Partnership (C.A.4 (S.C.) 2013) 514 Fed.Appx. 276, 2013 WL 951105, Unreported. Easements 12(3)

Under South Carolina law, no evidence was presented that partnership lacked a legal or business justification for refusing to acknowledge a purported ingress and egress easement, as required to support former partner’s claim of tortious interference with contractual relations. Rogers v. River Hills Ltd. Partnership (C.A.4 (S.C.) 2013) 514 Fed.Appx. 276, 2013 WL 951105, Unreported. Torts 242

6. Burden of proof

The party asserting a transfer of title bears the burden of proving its own good title. Lowcountry Open Land Trust v. State (S.C.App. 2001) 347 S.C. 96, 552 S.E.2d 778. Quieting Title 44(1)

Landowner established fee simple ownership of tidelands, as the state’s grant adequately conveyed the tideland acreage to landowner’s predecessor in title; the plat, which was incorporated into the grant, clearly depicted the area delineated in the grant, with “marsh” appearing twice on its face, and surveying expert concluded that the land in question was a portion of the marsh as set forth in the plat. Lowcountry Open Land Trust v. State (S.C.App. 2001) 347 S.C. 96, 552 S.E.2d 778. Water Law 2679

7. Title companies

Commercial title company, which also assists homeowners in purchasing residential real estate, engaged in unlawful practice of law by preparing deeds, notes and other instruments related to mortgage loans and transfers of real property, even though forms were standard and required no creative drafting, and by preparing title abstracts for persons other than attorneys, although company conduct title examinations and prepare abstracts for benefit of attorneys, because examination of titles requires expert legal knowledge and skill; however, commercial title company could continue its practice of handling real estate and mortgage loan closings with restriction that no legal advice be given to parties during closing sessions, and if parties to transaction raise legal question at closing, company should stop proceeding and instruct them to consult their attorneys, and commercial title company may also continue its practice of mailing or hand‑carrying instruments to courthouse for recording, as physical transportation or mailing of documents to courthouse cannot be considered practice of law, unless this step takes place as part of real estate transfer as in this respect it is aspect of conveying and effecting legal rights, as appropriate sequence of recording is critical in order to protect purchaser’s title to property, such that instructions given to court clerk or register as to manner of recording, if given by lay person for benefit of another, must be given under supervision of attorney. State v. Buyers Service Co., Inc. (S.C. 1987) 292 S.C. 426, 357 S.E.2d 15.

8. Restrictive covenants

Restrictions on the types of structures that could be built and activities on lots designated on a plat did not apply to lake access lot included on the plat, and therefore lot’s owners were allowed to have gazebo, storage building with toilet, fire pit, and deck on the lot; confirmatory amendment clarified that the restrictions only applied to numbered lots, which included all lots in the plat other than the lake access lot, the restrictions referenced things relevant to residences, and there was no evidence that the grantors ever intended for the lake access lot to be a residential lot. Snow v. Smith (S.C.App. 2016) 416 S.C. 72, 784 S.E.2d 242. Covenants 51(2)

Confirmatory amendment clarifying that restrictions on lots within a plat only applied to numbered lots was valid, where the grantors reserved the right to amend the restrictions in the document governing restrictions, and the amendment was reasonable. Snow v. Smith (S.C.App. 2016) 416 S.C. 72, 784 S.E.2d 242. Covenants 73

Decline in real estate market following owners’ purchase of condominium was not a change in conditions sufficient to warrant voiding of restrictive covenant in master deed and bylaws for horizontal property regime that prohibited rental to college students unrelated to unit owner; restrictive covenant’s purpose was to ensure safety of complex’s residents as well as value of investment, and condominium’s decrease in value had no effect on owners’ association’s need to minimize risk that complex might develop a dormitory‑like atmosphere. SPUR at Williams Brice Owners Ass’n, Inc. v. Lalla (S.C.App. 2015) 415 S.C. 72, 781 S.E.2d 115, rehearing denied. Common Interest Communities 118

Evidence that owners’ association for horizontal property regime failed to monitor rental of units and allowed college students to live at complex did not prohibit association from enforcing restrictive covenant in master deed and bylaws of horizontal property regime, which prohibited rental to college students unrelated to owner, under doctrine of waiver, where association took action to enforce restrictive covenant upon receiving complaint. SPUR at Williams Brice Owners Ass’n, Inc. v. Lalla (S.C.App. 2015) 415 S.C. 72, 781 S.E.2d 115, rehearing denied. Common Interest Communities 122

Restrictive covenant in master deed and bylaws for horizontal property regime, which prohibited rental of unit to college students unrelated to owner, was binding on owners who purchased unit, where owners admitted that they were subject to master deed and bylaws, and South Carolina Horizontal Property Act required compliance with master deed and bylaws. SPUR at Williams Brice Owners Ass’n, Inc. v. Lalla (S.C.App. 2015) 415 S.C. 72, 781 S.E.2d 115, rehearing denied. Common Interest Communities 118

In determining in declaratory judgment action whether five lots on six‑acre segment of land were “developed” lots within meaning of provision of restrictive covenants allowing amendments to the covenants only upon a majority vote of the owners of “developed” lots, trial court did not need to consider extrinsic evidence consisting of the testimony of attorney who drafted the restrictive covenants as to the meaning of the term “developed lots,” as the language of the restrictive covenants was unambiguous. Hanold v. Watson’s Orchard Property Owners Ass’n, Inc. (S.C.App. 2015) 412 S.C. 387, 772 S.E.2d 528, rehearing denied, certiorari granted, affirmed 419 S.C. 162, 797 S.E.2d 47. Covenants 49; Evidence 455

Provision of restrictive covenants imposed on 22‑acre tract of land, permitting enforcement of restrictions against any property owner into which the property “shall subsequently be cut,” did not indicate that six‑acre segment of the property, which had been divided into five lots in unrecorded plat, had five “developed” lots within meaning of separate provision of restrictive covenants that required amendments to the restrictive covenants to be supported by a majority vote of owners of “developed” lots; unlike the provision concerning the ability to enforce restrictive covenants, voting rights were not based on merely owning a lot, but on owning a developed lot. Hanold v. Watson’s Orchard Property Owners Ass’n, Inc. (S.C.App. 2015) 412 S.C. 387, 772 S.E.2d 528, rehearing denied, certiorari granted, affirmed 419 S.C. 162, 797 S.E.2d 47. Covenants 73

Five lots of six‑acre land segment, which was part of larger 22‑acre tract subject to restrictive covenants that could be amended by majority vote of owners of “developed” lots, were not “developed” within meaning of restrictive covenants, and thus owners of the lots were not entitled to five votes in an attempt to amend the restrictive covenants, although owners possessed an easement for sewer, drainage, and utilities over the property, and an unrecorded plat divided the property into five lots; term “developed” required affirmative acts on the part of the owners to transfer the property from raw land to a more improved state, owners had made no improvements to the lots during 30 years of ownership, and any prefatory steps to develop the property in the future did not satisfy language requiring the property to “have been developed” already. Hanold v. Watson’s Orchard Property Owners Ass’n, Inc. (S.C.App. 2015) 412 S.C. 387, 772 S.E.2d 528, rehearing denied, certiorari granted, affirmed 419 S.C. 162, 797 S.E.2d 47. Covenants 73

Owner of property that was subject to restrictive covenants preventing commercial activity had standing to bring action against neighbors, whose property was subject to same covenant, for alleged violations of the covenant; developers intended for neighbors’ property to be part of subdivision, and developers expressed that intention in the restrictive covenants, deeds, and plats affecting the property. Kinard v. Richardson (S.C.App. 2014) 407 S.C. 247, 754 S.E.2d 888, rehearing denied. Covenants 77.1

Amendment to restrictions on property that limited property use to single family residential use, which amendment purportedly allowed for horses on neighbor’s property, was not lawfully executed according to the terms of the restrictive covenants since a majority of owners of lots subjected to the covenants did not approve the amendment, and thus, the plain language of the deeds to neighbors required the property to be subject to only the terms of the original restrictive covenants. Kinard v. Richardson (S.C.App. 2014) 407 S.C. 247, 754 S.E.2d 888, rehearing denied. Covenants 73

Because an action seeking an injunction to enforce restrictive covenants sounds in equity, upon a finding that a restriction has been violated, a court may not enforce the restriction as a matter of law but must consider equitable doctrines asserted by a party when deciding whether to enforce the covenant. Kinard v. Richardson (S.C.App. 2014) 407 S.C. 247, 754 S.E.2d 888, rehearing denied. Injunction 1222

Neighbors violated restrictive covenant that prohibited any use of property other than single family residential use when they leased tract of open land adjacent to their residence to the operators of equestrian center for the purpose of using tract as a horse pasture to enhance their equestrian business; neighbors’ tract was not used for residential purposes, but rather, it was used for a commercial venture. Kinard v. Richardson (S.C.App. 2014) 407 S.C. 247, 754 S.E.2d 888, rehearing denied. Covenants 103(1)

Although neighbors’ lot was not originally subject to restrictive covenants that excluded commercial activities on land, terms of the original covenants provided for additional subdivision property to be subjected to them by any separate legal instrument, such as a deed, and thus, neighbors’ lot was subject to the covenants, where deed that conveyed property to neighbors’ stated that property was subject to restrictive covenants. Kinard v. Richardson (S.C.App. 2014) 407 S.C. 247, 754 S.E.2d 888, rehearing denied. Covenants 84

9. Negligence actions

Real estate closing attorney, who had bought another attorney’s title work on home his client was purchasing, and who had relied on the title exam in concluding that there were no back taxes owed on the property, owed his client a duty to deliver good and clear title, and absent her agreement otherwise, he was liable for that responsibility, regardless of the other attorney’s negligence in failing to discover the home had been sold at a tax sale the previous year. Johnson v. Alexander (S.C. 2015) 413 S.C. 196, 775 S.E.2d 697. Attorney and Client 109

Real estate closing attorney’s failure to discover tax sale of home his client had purchased, was the proximate cause of his client’s not receiving a marketable title, or any title, to the property she purchased, resulting in foreclosure of the property, in client’s legal malpractice action. Johnson v. Alexander (S.C. 2015) 413 S.C. 196, 775 S.E.2d 697. Attorney and Client 109

10. Equitable mortgages

There was no evidence that two tracts of property that decedent had deeded to his sister were subject to an equitable mortgage as would require sister to return the property to decedent’s estate; there was no contemporaneous writing indicating that the property was to serve as a security for any debt decedent owed to his sister, and possible significance in disparity in amount sister paid for the property and its value was ameliorated by the close relationships and familial transactions between the parties. Walker v. Brooks (S.C. 2015) 414 S.C. 343, 778 S.E.2d 477. Mortgages And Deeds Of Trust 829

A repurchase agreement that was written nearly a year after the execution of a final deed, along with a ledger of costs that purported to enumerate debts accrued over a five year period, was insufficient to support change in the nature of the conveyance of decedent’s real property to his sister to an equitable mortgage. Walker v. Brooks (S.C. 2015) 414 S.C. 343, 778 S.E.2d 477. Mortgages And Deeds Of Trust 838(3)

11. Review

Homeowner’s challenge to trial court’s ruling that town had an easement by prescription for sewer line on her property was unpreserved for appellate review; homeowner never objected to court’s consideration of prescriptive easement issue, and never argued that the issue was not properly raised or that the court’s consideration of the question violated her due process rights. Graham v. Town of Latta, South Carolina (S.C.App. 2016) 417 S.C. 164, 789 S.E.2d 71, rehearing denied. Appeal and Error 170(2); Appeal and Error 173(5)

Group of neighboring homeowners waived for appellate review their claim that master erred in finding that lake access lot had been improved by its new owners, where homeowners failed to provide citations or legal authority for the argument. Snow v. Smith (S.C.App. 2016) 416 S.C. 72, 784 S.E.2d 242. Appeal and Error 1079

**SECTION 27‑7‑20.** Warranty and additional clauses in conveyances.

Section 27‑7‑10 shall be so construed as not to oblige any person to insert the clause of warranty or to restrain him from inserting any other clause in conveyances, as may be deemed proper and advisable by the purchaser and seller, or to invalidate the forms formerly in use within this State.

HISTORY: 1962 Code Section 57‑252; 1952 Code Section 57‑252; 1942 Code Section 8694; 1932 Code Section 8694; Civ. C. ‘22 Section 5216; Civ. C. ‘12 Section 3453; Civ. C. ‘02 Section 2367; G. S. 1775; R. S. 1886; 1795 (5) 255; 1899 (23) 48; 1936 (39) 1301.

Library References

Deeds 28.

Westlaw Topic No. 120.

C.J.S. Deeds Sections 34 to 38.

LAW REVIEW AND JOURNAL COMMENTARIES

The Fee Simple Conditional in South Carolina. 18 S.C. L. Rev. 476.

NOTES OF DECISIONS

In general 1

1. In general

A quitclaim deed is a lawful means of conveying title; however, a “quitclaim deed” does not guarantee the quality of title, but only conveys that which the grantor may lawfully convey. Milton P. Demetre Family Ltd. Partnership v. Beckmann (S.C.App. 2014) 413 S.C. 38, 773 S.E.2d 596, certiorari denied. Deeds 25; Deeds 121

Purported owner of disputed property, who allegedly received title to property through quitclaim deed from grantor, failed to prove title to disputed property, namely two lots, and thus purported owner was not entitled to quiet title to lots; neither the plat referenced in quitclaim deed nor an earlier plat depicted the lots, purported property owner acknowledged that the lots did not exist as lots on plat referenced in deed, later plats that did reflect lots were not in purported property owner’s chain of title and were not in existence at time property was last deeded prior to quitclaim deed, and evidence was presented that grantor believed he did not have title to property. Milton P. Demetre Family Ltd. Partnership v. Beckmann (S.C.App. 2014) 413 S.C. 38, 773 S.E.2d 596, certiorari denied. Quieting Title 10.2

Habendum clause exceptions for matters affecting title as shown on plat, matters uncovered by a current and accurate survey, and public rights‑of‑way limited grantor’s special warranty; the grantor did not covenant that the property would be free from all encumbrances, but limited covenant to encumbrances not excepted through the habendum clause. Bennett v. Investors Title Ins. Co. (S.C.App. 2006) 370 S.C. 561, 635 S.E.2d 660. Covenants 48

A grantee’s unsuccessful defense of title entitles the grantee to attorney fees under warranty deed requiring grantor to defend title against people lawfully claiming the land; overruling Jeter v. Glenn, 9 Rich. 374, 43 S.C.L. 374. Black v. Patel (S.C. 2004) 357 S.C. 466, 594 S.E.2d 162. Covenants 132(2)

Quitclaim deed is a proper mode of conveying fee. Martin v. Ragsdale (S.C. 1905) 71 S.C. 67, 50 S.E. 671.

**SECTION 27‑7‑30.** Omission of seal.

Whenever it shall appear from the attestation clause or from the other parts of any instrument in writing that it was the intention of the party or parties thereto that such instrument should be a sealed instrument, such instrument shall be construed to be, and shall have the effect of, a sealed instrument, although no seal be actually attached thereto.

HISTORY: 1962 Code Section 57‑253; 1952 Code Section 57‑253; 1942 Code Section 8694; 1932 Code Section 8694; Civ. C. ‘22 Section 5216; Civ. C. ‘12 Section 3453; Civ. C. ‘02 Section 2367; G. S. 1775; R. S. 1886; 1795 (5) 255; 1899 (23) 48; 1936 (39) 1301.

CROSS REFERENCES

What are considered sealed instruments, see Section 19‑1‑160.

Library References

Deeds 46.

Westlaw Topic No. 120.

C.J.S. Deeds Section 67.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Covenants Section 6, by Deed.

NOTES OF DECISIONS

In general 1

1. In general

While a seal is necessary, Cline v Black (1828) 14 SCL 431; Jones v Crawford (1841) 26 SCL 373, whatever is intended as a seal is sufficient. St. Philip’s Church v Zion Presbyterian Church (1885) 23 SC 297.

**SECTION 27‑7‑40.** Creation of joint tenancy; filing; severance.

(a) In addition to any other methods for the creation of a joint tenancy in real estate which may exist by law, whenever any deed of conveyance of real estate contains the names of the grantees followed by the words “as joint tenants with rights of survivorship, and not as tenants in common” the creation of a joint tenancy with rights of survivorship in the real estate is conclusively deemed to have been created. This joint tenancy includes, and is limited to, the following incidents of ownership:

(i) In the event of the death of a joint tenant, and in the event only one other joint tenant in the joint tenancy survives, the entire interest of the deceased joint tenant in the real estate vests in the surviving joint tenant, who is vested with the entire interest in the real estate owned by the joint tenants.

(ii) In the event of the death of a joint tenant survived by more than one joint tenant in the real estate, the entire interest of the deceased joint tenant vests equally in the surviving joint tenants who continues to own the entire interest owned by them as joint tenants with right of survivorship.

(iii) The fee interest in real estate held in joint tenancy may not be encumbered by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance.

(iv) If all the joint tenants who own real estate held in joint tenancy join in an encumbrance, the interest in the real estate is effectively encumbered to a third party or parties.

(v) If real estate is owned by only two joint tenants, a conveyance by one joint tenant to the other joint tenant terminates the joint tenancy and conveys the fee in the real estate to the other joint tenant.

(vi) If real estate is owned by more than two joint tenants, a conveyance by one joint tenant to all the other joint tenants therein conveys his interest therein equally to the other joint tenants who continue to own the real estate as joint tenants with right of survivorship.

(vii) Any joint tenancy in real estate held by a husband and wife with no other joint tenants is severed upon the filing of an order or decree dissolving their marriage and vests the interest in both the parties as tenants in common, unless an order or decree of a court of competent jurisdiction otherwise provides.

(viii) The interest of any joint tenant in a joint tenancy in real estate sold or conveyed by a court of competent jurisdiction where otherwise permitted by law severs the joint tenancy, unless the order or decree of such court otherwise provides and vests title in the parties as tenants in common.

(ix) If real estate is owned by two or more joint tenants, a conveyance by all the joint tenants to themselves as tenants in common severs the joint tenancy and conveys the fee in the real estate to these individuals as tenants in common.

(b) The surviving joint tenant or tenants may, following the death of a joint tenant, file with the Register of Deeds of the county in which the real estate is located a certified copy of the certificate of death of the deceased joint tenant. The fee to be paid to the Register of Deeds for this filing is the same as the fee for the deed of conveyance. The Register of Deeds must index the certificate of death under the name of the deceased joint tenant in the grantor deed index of that office. The filing of the certificate of death is conclusive that the joint tenant is deceased and that the interest of the deceased joint tenant has vested by operation of law in the surviving joint tenant or tenants in the joint tenancy in real estate.

(c) Except as expressly provided herein, any joint tenancy severed pursuant to the terms of this section is and becomes a tenancy in common without rights of survivorship. Nothing contained in this section shall be construed to create the estate of tenancy by the entireties. Nothing contained in this section amends any statute relating to joint tenancy with rights of survivorship in personal property but affects only real estate. The provisions of this section must be liberally construed to carry out the intentions of the parties. This section supersedes any conflicting provisions of Section 62‑2‑804.

HISTORY: 2000 Act No. 398, Section 2; 2002 Act No. 362, Section 7.

Library References

Mortgages 3, 4.

Westlaw Topic No. 266.

C.J.S. Landlord and Tenant Section 8.

C.J.S. Mortgages Sections 2, 5 to 7.

NOTES OF DECISIONS

In general 1

1. In general

Unlike a tenancy in common with a right of survivorship, a joint tenancy with a right of survivorship is capable of being defeated by the unilateral act of one joint tenant. Smith v. Cutler (S.C. 2005) 366 S.C. 546, 623 S.E.2d 644. Joint Tenancy 5

Deed by which wife conveyed property to herself and husband “for and during their joint lives and upon the death of either of them, then to the survivor of them” created a joint tenancy rather than a tenancy in common with indestructible right of survivorship, and thus property was subject to partition, even though language of deed was not identical to language in statute providing conclusive method of creating joint tenancy; statute specified that it was in addition to any other methods for creating a joint tenancy, deed satisfied the four common law unities and unambiguously created a right of survivorship, and deed would be construed in favor of a more marketable estate. Smith v. Rucker (S.C.App. 2004) 357 S.C. 532, 593 S.E.2d 497, rehearing denied, certiorari granted, reversed 366 S.C. 546, 623 S.E.2d 644. Marriage And Cohabitation 710; Partition 13