CHAPTER 3

Mortgages and Deeds of Trust Generally

ARTICLE 1

Validity and General Rights

**SECTION 29‑3‑10.** Rights and title of mortgagor and mortgagee.

 No mortgagee shall be entitled to maintain any possessory action for the real estate mortgaged, even after the time allotted for the payment of the money secured by mortgage is elapsed, but the mortgagor shall be deemed the owner of the land and the mortgagee as owner of the money lent or due and the mortgagee shall be entitled to recover satisfaction for such money out of the land by foreclosure and sale according to law. But notwithstanding the foregoing provision all releases of the equity of redemption shall be binding and effectual in law.

HISTORY: 1962 Code Section 45‑51; 1952 Code Section 45‑51; 1942 Code Section 8701; 1932 Code Section 8701; Civ. C. ‘22 Section 5223; Civ. C. ‘12 Section 3460; Civ. C. ‘02 Section 2374; G. S. 2299; R. S. 1893; 1791 (5) 170; 1797 (5) 311; 1879 (17) 19.

Editor’s Note

1984 Act No. 355, Section 1, provides as follows:

“The provisions of Section 804 of the Alternative Mortgage Transaction Parity Act of 1982, Title VIII of P.L. 97‑320 (96 Stat. 1545), known as the Garn‑St. Germain Depository Institutions Act of 1982, do not apply to any alternative mortgage transaction as the term alternative mortgage transaction is defined in Section 803(1) of the Alternative Mortgage Transaction Parity Act of 1982, and that this State does not want the provisions of Section 804 of the Alternative Mortgage Transaction Parity Act of 1982 to apply with respect to any alternative mortgage transaction made in this State.”

CROSS REFERENCES

Apportionment of taxes and costs in care of mortgaged property sold under tax execution, see Section 12‑45‑150.

Recording of mortgages of cooperatives and foreign corporations acting under Electric Cooperative Act, see Section 33‑49‑70.

Library References

Mortgages 187.1.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 57, 288.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 41, Prior to Default.

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:2, Alternative Mortgage Transactions.

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:19, Foreclosure.

Restatement (3d) of Property (Mortgages) Section 4.1, Mortgage Creates Security Interest Only.

Restatement (3d) Property‑Security (Mortgages) Section 4.1 TD 2, Mortgage Creates Security Interest Only.

LAW REVIEW AND JOURNAL COMMENTARIES

Mortgages—Consideration in a Valid Debt or Obligation—Are Either or Both Necessary to the Validity of a Mortgage? 19 S.C. L. Rev. 798.

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1. In general

Cited in Wilson v Wilson (1930) 158 SC 425, 155 SE 627. Stewart v Smith (1926) 138 SC 124, 135 SE 801. Pearce v Dunn (1923) 122 SC 441, 115 SE 621. Graham v Standard Fire Ins. Co. (1922) 119 SC 218, 112 SE 88. Scates v Henderson (1895) 44 SC 548, 22 SE 724. Mills v Sumter Lumber Co. (1918) 109 SC 276, 95 SE 355.

Before the act of 1791 legal title passed to mortgagee upon defeasance, and he could maintain action for the land, Verree v Verree (1807) SCL 211. State v Laval (1827) 15 SCL 336. Stoney v Shultz (1834) 10 SC Eq 465. Drayton v Marshall (1839) 14 SC Eq 373. Mitchell v Bogan (1897) 45 SCL 686. Laffan v Kennedy (1868) 49 SCL 246. Reeder & Davis v Dargan (1881) 15 SC 175. Durand v Isaacks (1826) 15 SCL 54. Stoney v Shultz (1834) 10 SC Eq 465. Mitchell v Bogan (1897) 45 SCL 686. Laffan v Kennedy (1868) 49 SCL 246. Williams v Beard (1870) 1 SC 309. Warren v Raymond (1879) 12 SC 9.

This section made the position of a mortgagee merely that of a creditor with security, and not that of a legal owner. Glover v. U.S., U.S.Ct.Cl., 17 S.Ct. 95, 164 U.S. 294, 41 L.Ed. 440 (1896).

Lender did not breach any obligation of confidentiality concerning lending relationship by disclosing information about promissory note secured by mortgages to potential purchaser after borrower defaulted; even though borrower’s managing member trusted lender’s president, member did not repose special trust in president, lender did not have contractual duty not to disclose information once loan was in default, and borrower could not have reasonably believed that president was acting on borrower’s behalf. Hotel and Motel Holdings, LLC v. BJC Enterprises, LLC (S.C.App. 2015) 414 S.C. 635, 780 S.E.2d 263. Mortgages And Deeds Of Trust 1181

Original lender did not breach any duty of good faith and fair dealing in contract with borrower by assigning note, mortgages, and loan documents to entity owned by uncle of borrower’s managing member, who had member’s power of attorney; lender renegotiated and renewed loan two times, agreed to renegotiate renewal two more times, approved borrower’s request for payment deferral, and voluntarily dismissed its original foreclosure action against borrower, promissory note did not prohibit lender from selling or assigning documents, and lender did not prevent borrower from making, or did not refuse to accept, remaining payment. Hotel and Motel Holdings, LLC v. BJC Enterprises, LLC (S.C.App. 2015) 414 S.C. 635, 780 S.E.2d 263. Mortgages And Deeds Of Trust 1181

Mortgagor failed to demonstrate that mortgagee tortiously interfered with prospective contract between mortgagor and auction company by disclosing to company that it would not accept anything less than amount owed on property, that it would not be willing to release portion of property to buyer, that specific amount was due on loan, and that mortgagee did not plan to renew loan; while mortgagor argued that disclosure caused potential buyer to reduce its purchase offer from $12 million offered in one year to $4 million two years later, mortgagor rejected terms of $12 million offer and subsequent downturn in commercial real estate market was unforeseen, mortgagor called no witnesses to testify as to existence of any other existing prospective contract, and information disclosed was necessary to protect mortgagee’s contractual rights under loan documents. First South Bank v. South Causeway, LLC (S.C.App. 2015) 414 S.C. 434, 778 S.E.2d 493. Torts 242

An allegation that a deed, absolute on its face, is in fact a mortgage must be sustained by testimony prima facie showing that the allegation is true; when this is done, it removes the presumption arising from the fact that a paper is presumed to be what its face imports. Walker v. Brooks (S.C.App. 2013) 403 S.C. 212, 742 S.E.2d 869, affirmed 414 S.C. 343, 778 S.E.2d 477. Mortgages And Deeds Of Trust 837

When an allegation that a deed, absolute on its face, is in fact a mortgage, is sustained by testimony prima facie showing that the allegation is true, it becomes incumbent on the mortgagee to remove the inferences that may be drawn from such prima facie showing. Walker v. Brooks (S.C.App. 2013) 403 S.C. 212, 742 S.E.2d 869, affirmed 414 S.C. 343, 778 S.E.2d 477. Mortgages And Deeds Of Trust 837

Neither the deeds, that purported to transfer two tracts of land from decedent to his sister, nor a repurchase agreement executed nearly a year after the execution of the second deed, contained any language that would have given rise to an inference of a mortgage, as a factor in determining whether the decedent retained an interest in the properties. Walker v. Brooks (S.C.App. 2013) 403 S.C. 212, 742 S.E.2d 869, affirmed 414 S.C. 343, 778 S.E.2d 477. Mortgages And Deeds Of Trust 837

If the consideration passing between the parties, or the amount to be paid by the grantor on exercising his right to repurchase, would be fairly proportioned to the value of the property, if considered as a debt or loan secured by a mortgage thereon, but grossly inadequate if regarded as the price of the land on an absolute sale, this will tend strongly to show that a sale could not have been intended, but that the transaction should rather be treated as a mortgage. Walker v. Brooks (S.C.App. 2013) 403 S.C. 212, 742 S.E.2d 869, affirmed 414 S.C. 343, 778 S.E.2d 477. Mortgages And Deeds Of Trust 829

The fact that deeds that purported to transfer ownership of two tracts of land from decedent to his sister reflected a lower price than the assessed value of the land weighed in favor of showing that a sale was not intended, but rather that the transaction should have been treated as a mortgage. Walker v. Brooks (S.C.App. 2013) 403 S.C. 212, 742 S.E.2d 869, affirmed 414 S.C. 343, 778 S.E.2d 477. Mortgages And Deeds Of Trust 829

A repurchase memorandum written nearly a year after the final conveyance of real property to decedent’s sister was insufficient to constitute evidence of any prior negotiations between decedent and his sister, as a factor in determining whether a mortgage was intended instead of the absolute deeds that were executed; the close relationships and familial transactions between the parties resulted in informal and inadequately documented transactions, and despite decedent’s familiarity with the process of mortgaging his property, he chose to deed the land in question to his sister. Walker v. Brooks (S.C.App. 2013) 403 S.C. 212, 742 S.E.2d 869, affirmed 414 S.C. 343, 778 S.E.2d 477. Mortgages And Deeds Of Trust 829; Mortgages And Deeds Of Trust 838(3)

Section 29‑3‑10 recognizes that a mortgagee has an interest in the mortgaged property. State v. Leach (S.C. 1984) 282 S.C. 178, 318 S.E.2d 267.

2. Nature and effect of mortgage

Mortgage does not convey any estate, even after time for redemption has passed. Thayer v Cramer (1826) 6 SC Eq 395. Lowndes v Chisholm (1827) 7 SC Eq 455. Simons v Bryce (1878) 10 SC 354. Warren v Raymond (1879) 12 SC 9. Annely v De Saussure (1879) 12 SC 488. Reeder & Davis v Dargan (1881) 15 SC 175. Warren v Raymond (1882) 17 SC 163. Hendrix v Seaborn (1886) 25 SC 481. Johnson v Johnson (1887) 27 SC 309, 3 SE 606. Seignious v Pate (1890) 32 SC 134, 10 SE 880. Hardin v Hardin (1891) 34 SC 77, 12 SE 936. Glover v United States (1896) 164 US 294, 41 L Ed 440, 17 S Ct 95.

Under this section a mortgage on real property is merely a pledge, the mortgagee having a mere lien. Citizens’ & Southern Bank of South Carolina v. Pine Forest Inn Co., 1929, 31 F.2d 301.

A mortgage and a note are separate securities for the same debt, and a mortgagee who has a note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action. Bank of America, N.A. v. Draper (S.C.App. 2013) 405 S.C. 214, 746 S.E.2d 478. Mortgages And Deeds Of Trust 711; Mortgages And Deeds Of Trust 1624(2)

The assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but the assignment of the mortgage alone does not carry with it an assignment of the note. Bank of America, N.A. v. Draper (S.C.App. 2013) 405 S.C. 214, 746 S.E.2d 478. Mortgages And Deeds Of Trust 1414

Lender who issued loan to husband could not place mortgage to secure loan on real property owned by wife only. Wachovia Bank, N.A. v. Coffey (S.C. 2013) 404 S.C. 421, 746 S.E.2d 35. Mortgages And Deeds Of Trust 943

The mortgagor of land is the owner in fee and has title to the land so mortgaged, but the mortgagee has a lien upon the land to secure his debt. Epstein v. Coastal Timber Co., Inc. (S.C. 2011) 393 S.C. 276, 711 S.E.2d 912. Mortgages And Deeds Of Trust 892

Mortgage represents security for obligation, not full payment thereof; it is not implicit in taking of mortgage that creditor is to look only to property for satisfaction of debt. Perpetual Bldg. and Loan Ass’n of Anderson v. Braun (S.C. 1978) 270 S.C. 338, 242 S.E.2d 407. Mortgages And Deeds Of Trust 925; Mortgages And Deeds Of Trust 1624(2)

Chattel mortgage does not vest title to mortgaged property in mortgagee at time of execution of mortgage, though this section makes no reference to personal property. General Motors Acceptance Corp. v. Hanahan (S.C. 1928) 146 S.C. 257, 143 S.E. 820. Chattel Mortgages 129

Deed of conveyance and separate agreement to reconvey constitute a mortgage. Francis v. Francis (S.C. 1907) 78 S.C. 178, 58 S.E. 804.

Under this section a mortgage is not a conveyance. Burkett v. Whittemore (S.C. 1892) 36 S.C. 428, 15 S.E. 616.

Under South Carolina law, the assignment of a note secured by a mortgage carries with it an assignment of the mortgage. Scheider v. Deutsche Bank Nat. Trust Co. (C.A.4 (S.C.) 2014) 572 Fed.Appx. 185, 2014 WL 2109810. Mortgages And Deeds Of Trust 1414

3. Application in particular cases—In general

Release of the equity of redemption operates under this section as a conveyance of land. Mitchell v Bogan (1897) 45 SCL 686. Simons v Bryce (1878) 10 SC 354. Navassa Guano Co. v Richardson (1887) 26 SC 401, 2 SE 307. Tant v Guess (1892) 37 SC 489, 16 SE 472.

Mortgagee has equitable interest which should be protected in partition suit by making him a party thereto. Ex parte Johnson (S.C. 1928) 147 S.C. 259, 145 S.E. 113. Partition 46.1

A decree in a foreclosure action that plaintiff have judgment against defendants for the property subject to this action was held merely to exclude the idea that a personal judgment was intended, and not to give plaintiff judgment for possession of the land but to provide for satisfaction by sale pursuant to this section. Citizens’ Bank v. Davis (S.C. 1923) 126 S.C. 175, 119 S.E. 580. Mortgages And Deeds Of Trust 2158

Where there are no inequitable circumstances after maturity of a mortgage, the mortgagor has the power to make an absolute conveyance to the mortgagee in satisfaction of the debt, especially in view of this section recognizing the validity of a release of the equity of redemption. Brockington v. Lynch (S.C. 1922) 119 S.C. 273, 112 S.E. 94. Mortgages And Deeds Of Trust 2238(3)

Mortgagee in possession is entitled to hold the property for subsequent debts, where deed was intended to secure subsequent indebtedness. Cox v. Enterprise Bank (S.C. 1920) 115 S.C. 191, 104 S.E. 693.

Under this section the legal title upon the execution of a mortgage of real estate remains in the mortgagor, and, when the mortgagor dies leaving his wife and children in possession, the title descends to them and the premises cannot be sold by the assignee of the mortgage under a power of sale contained in the mortgage without making the mortgagor’s heirs at law parties to the proceedings. Johnson v. Johnson (S.C. 1887) 27 S.C. 309, 3 S.E. 606, 13 Am.St.Rep. 636. Mortgages And Deeds Of Trust 891

4. —— Where mortgagee holds adversely to mortgagor’s title, application in particular cases

Legal relationship does not prevent mortgagee in possession from holding adversely to mortgagor’s legal title, nor preclude him from perfecting legal title in himself by adverse possession in view of this section. Frady v. Ivester (S.C. 1924) 129 S.C. 536, 125 S.E. 134. Mortgages And Deeds Of Trust 965

Where mortgagors executed a deed to the mortgagee providing that it should be a mortgage until a specified date, and should then become absolute if the mortgagors had failed to pay, and the mortgagee, after such date, without other consideration than the mortgagors’ inability to pay, took possession, the relation of mortgagor and mortgagee continued and the law imposed the duties of a trustee upon the mortgagee, and she could not hold adversely to the rights of the mortgagors until she either surrendered possession or gave notice of an adverse possession. Frady v. Ivester (S.C. 1921) 118 S.C. 195, 110 S.E. 135.

5. Fraud

Threat of damages to guarantors if mortgagee prevailed in his action to collect on promissory note and mortgage was sufficient to support damages element of guarantors’ affirmative defense to mortgagee’s action, and thus, finding that mortgagee fraudulently induced guarantors to guarantee note and mortgage established that defense and terminated guarantors’ obligation on the note and mortgage. Collins Music Co. Inc. v. FMW Corp. (S.C. 2003) 355 S.C. 446, 586 S.E.2d 128. Guaranty 20

Mortgagors who claimed that they were harmed by entering into mortgage agreement secured by property with over‑estimated appraisal value failed to establish elements of fraud in action against mortgagee; mortgagors testified that they did not actually rely on appraisal in purchasing property, mortgagors made no effort to independently ascertain property’s value before purchase, and there was no evidence that the property was not worth the appraised amount at the time of the appraisal. Robertson v. First Union Nat. Bank (S.C.App. 2002) 350 S.C. 339, 565 S.E.2d 309, rehearing denied, certiorari denied, certiorari dismissed as improvidently granted 357 S.C. 191, 592 S.E.2d 625. Fraud 20; Fraud 22(1); Fraud 25

6. Foreclosure

Borrower did not perform or was not able to perform under note secured by mortgages, and therefore borrower could not recover from lender under breach of contract theory; even if lender breached its contract with borrower, borrower was in default when it failed to make required balloon payment and when it failed to pay balance on interest payment. Hotel and Motel Holdings, LLC v. BJC Enterprises, LLC (S.C.App. 2015) 414 S.C. 635, 780 S.E.2d 263. Mortgages And Deeds Of Trust 1641

Assignee of loan documents did not breach contract with borrower by pursuing foreclosure action against borrower, where assignor assigned documents following assignor’s commencement of foreclosure action, providing assignee with legal right to continue pursuit of foreclosure action. Hotel and Motel Holdings, LLC v. BJC Enterprises, LLC (S.C.App. 2015) 414 S.C. 635, 780 S.E.2d 263. Mortgages And Deeds Of Trust 1181; Mortgages And Deeds Of Trust 1442

Borrower did not perform or was not able to perform contract with assignee of loan documents, and therefore borrower could not recover on counterclaims against assignee under breach of contract theory, in commercial foreclosure action; borrower was in default when it failed to make balloon payment and when it failed to make interest payment to assignor. Hotel and Motel Holdings, LLC v. BJC Enterprises, LLC (S.C.App. 2015) 414 S.C. 635, 780 S.E.2d 263. Mortgages And Deeds Of Trust 1710

Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor’s default on that debt; once the debt and default have been established, the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment, or accord and satisfaction. Bank of America, N.A. v. Draper (S.C.App. 2013) 405 S.C. 214, 746 S.E.2d 478. Mortgages And Deeds Of Trust 1791

Mortgagee’s assignee, which sought to foreclose following death of mortgagor who had mortgaged only his undivided one‑half interest in property, did not show circumstances that would make it inequitable for mortgagor’s wife, who also held undivided one‑half interest, to retain any benefits that she received from mortgagee or assignee, and thus mortgagee’s assignee could not recover from wife on unjust enrichment theory; there was no evidence that wife failed to disclose any information or discharge any legal obligation that would have prevented mortgagee from authorizing loan to mortgagor that was secured by only his one‑half interest, and mortgagee was or should have been aware that wife was named on the contract as purchaser and did not sign either the note or mortgage. Chase Home Finance, LLC v. Risher (S.C.App. 2013) 405 S.C. 202, 746 S.E.2d 471. Implied and Constructive Contracts 3

Mortgagor’s wife did not agree, by virtue of her status as a tenant‑in‑common who knew about mortgage at its inception, that the entire property, rather than mortgagor’s undivided one‑half interest, would be used as collateral for the loan, and therefore mortgagee’s assignee that sought to foreclose following mortgagor’s death could not obtain an equitable lien against wife’s interest; there was no showing that mortgagor’s execution of the note and mortgage was with reference to the common property rather than solely to his undivided one‑half interest. Chase Home Finance, LLC v. Risher (S.C.App. 2013) 405 S.C. 202, 746 S.E.2d 471. Marriage And Cohabitation 602; Mortgages And Deeds Of Trust 829

Mortgagee had sufficient information at closing to avoid the loss relating to the mortgaging of only mortgagor’s undivided one‑half interest and not both his interest and that of his wife, and therefore mortgagee’s assignee that sought to foreclose following mortgagor’s death was not entitled to equitable relief, even though mortgagee did not prepare or review the deed, where mortgagee processed the loan application, mortgagee prepared the other closing documents, the contract of sale listed both mortgagor and his wife as purchasers, and wife accompanied mortgagor when he applied for loan but was never asked to complete an application or to sign either the note or the mortgage. Chase Home Finance, LLC v. Risher (S.C.App. 2013) 405 S.C. 202, 746 S.E.2d 471. Mortgages And Deeds Of Trust 829; Mortgages And Deeds Of Trust 1656

Mortgagee’s assignee that sought to foreclose following death of mortgagor who had mortgaged only his undivided one‑half interest did not lack an adequate remedy at law, and therefore assignee could not obtain an equitable lien against mortgagor’s wife’s undivided one‑half interest, where master‑in‑equity allowed assignee to proceed with its foreclosure action against mortgagor’s interest, and assignee had the right to proceed with a deficiency claim against mortgagor’s estate if necessary. Chase Home Finance, LLC v. Risher (S.C.App. 2013) 405 S.C. 202, 746 S.E.2d 471. Mortgages And Deeds Of Trust 829

Mortgagee’s assignee failed to show that the parties had an express or implied intent that mortgagor’s wife’s undivided one‑half interest in property would serve as security for payment of the debt that mortgagor incurred, and therefore assignee, that sought to foreclose following mortgagor’s death, could not obtain an equitable lien against wife’s interest, even though wife admitted that she and mortgagor could not have purchased the residence without the loan, that she was aware of the loan, and that she benefited from the transaction. Chase Home Finance, LLC v. Risher (S.C.App. 2013) 405 S.C. 202, 746 S.E.2d 471. Mortgages And Deeds Of Trust 829

Under South Carolina law, bank, as the holder of both the note and the mortgage, was entitled to enforce those instruments once homeowners defaulted on their mortgage. Scheider v. Deutsche Bank Nat. Trust Co. (C.A.4 (S.C.) 2014) 572 Fed.Appx. 185, 2014 WL 2109810. Mortgages And Deeds Of Trust 1645; Mortgages And Deeds Of Trust 1749

Mortgagee bank was not exempt under South Carolina Unfair Trade Practices Act (SCUTPA) for its conduct in pursuing collection and foreclosure activities on mortgagor’s account; such conduct was not conduct regulated by state regulatory agency or state statute. Beattie v. Nations Credit Financial Services Corp. (C.A.4 (S.C.) 2003) 65 Fed.Appx. 893, 2003 WL 21213703, Unreported, rehearing granted, on rehearing 69 Fed.Appx. 585, 2003 WL 21480586. Antitrust And Trade Regulation 212

Mortgagee bank’s alleged conduct in falsely reporting to credit reporting agencies that mortgage was in foreclosure did not constitute an “unfair trade practice,” within meaning of the South Carolina Unfair Trade Practices Act (SCUTA), absent showing that mortgagee knew the foreclosure information was false. Beattie v. Nations Credit Financial Services Corp. (C.A.4 (S.C.) 2003) 65 Fed.Appx. 893, 2003 WL 21213703, Unreported, rehearing granted, on rehearing 69 Fed.Appx. 585, 2003 WL 21480586. Credit Reporting Agencies 3

7. Equitable mortgage

Sister presented evidence sufficient to show an outstanding debt existed between her and decedent, as a factor in determining the existence of an equitable mortgage on two tracts of land that had been transferred to sister by deeds, which were absolute on their face; sister testified that she spent all of her personal money helping decedent by purchasing his groceries, giving him cash, and helping with his utility bills, and a cost list enumerated debts accrued over a five‑year period which were close to $60,000 with interest included, which was the amount enumerated in a repurchase memorandum for repurchase of the two tracts. Walker v. Brooks (S.C.App. 2013) 403 S.C. 212, 742 S.E.2d 869, affirmed 414 S.C. 343, 778 S.E.2d 477. Mortgages And Deeds Of Trust 838(3)

The fact that decedent and his sister had an ongoing relationship in which she provided financial aid to him throughout the last years of his life, and that decedent apparently deeded two tracts of land to his sister of his own accord, weighed against a finding that the deeds, which on their face were absolute in nature, should have been treated as in indication of an equitable mortgage. Walker v. Brooks (S.C.App. 2013) 403 S.C. 212, 742 S.E.2d 869, affirmed 414 S.C. 343, 778 S.E.2d 477. Mortgages And Deeds Of Trust 829

Sister disproved any prima facie showing that two deeds that purported to transfer two tracts of decedent’s land to his sister created an equitable mortgage, rather than an absolute sale, by demonstrating that many of the factors that must be shown to establish an equitable mortgage did not fall in favor of decedent’s heirs. Walker v. Brooks (S.C.App. 2013) 403 S.C. 212, 742 S.E.2d 869, affirmed 414 S.C. 343, 778 S.E.2d 477. Mortgages And Deeds Of Trust 838(3)

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.App. 2013) 403 S.C. 212, 742 S.E.2d 869, affirmed 414 S.C. 343, 778 S.E.2d 477. Mortgages And Deeds Of Trust 829; Mortgages And Deeds Of Trust 838(3)

8. Justiciability

A mortgagor’s action seeking a declaration that her mortgage contract was void ab initio because it included an improper waiver of the appraisement rights was not ripe, where the mortgagee had made no attempt to foreclose on the property. Stephens v. HSBC Mortg. Services, Inc. (C.A.4 (S.C.) 2014) 565 Fed.Appx. 238, 2014 WL 1364016. Declaratory Judgment 189

9. Equitable subrogation

Attorney’s actual knowledge of first mortgage at time of closing of second mortgage imputed only constructive knowledge of first mortgage on second mortgagee, rather than actual knowledge, and therefore second mortgagee that had satisfied all other elements of equitable subrogation was entitled to be equitably subrogated to original first mortgage on real property. Independence Nat. Bank v. Buncombe Professional Park, LLC (S.C. 2015) 411 S.C. 605, 769 S.E.2d 663. Subrogation 31(4); Subrogation 38

10. Admissibility of evidence

E‑mail, which allegedly showed that representative of mortgagee was on notice that prospective buyer breached its confidentiality agreement by meeting with county officials regarding commercial property and that mortgagee had motive to contact auction company about upcoming auction, was inadmissible, in mortgagee’s foreclosure action against mortgagor, in which mortgagor filed counterclaims for tortious interference with a contract and breach of contract; it was impossible for e‑mail to provide mortgagee with motive for contacting company, as it was sent nine days after mortgagee contacted company. First South Bank v. South Causeway, LLC (S.C.App. 2015) 414 S.C. 434, 778 S.E.2d 493. Mortgages And Deeds Of Trust 1790; Torts 259

11. Sufficiency of evidence

Mortgagor was not entitled to new trial, in mortgagee’s foreclosure action against it, in which it filed counterclaim for breach of contract, despite claim that mortgagee’s commitment letter clearly required that only one of two conditions had to occur before interest reserve funds were due for deposit; because there was conflicting testimony and evidence on issues presented, jury was free to find that testimony of executor of promissory note was not credible and to not accept all or part of her testimony, and resolving disputes over conflicting versions of facts and correct inferences to draw from those facts fell squarely within jury’s role as fact finder. First South Bank v. South Causeway, LLC (S.C.App. 2015) 414 S.C. 434, 778 S.E.2d 493. Mortgages And Deeds Of Trust 1809

Mortgagor was not entitled to judgment notwithstanding the verdict (JNOV), in mortgagee’s foreclosure action against it, in which it filed counterclaim for breach of contract, despite claim that mortgagee’s commitment letter clearly required that only one of two conditions had to occur before interest reserve funds were due for deposit; mortgagor did not meet conditions precedent for subsequent advances as required by agreement between it and mortgagee, and, since mortgagor abandoned its plan to develop property, constituting event of default under agreement mortgagee did not have duty to make subsequent advance into account. First South Bank v. South Causeway, LLC (S.C.App. 2015) 414 S.C. 434, 778 S.E.2d 493. Mortgages And Deeds Of Trust 1181

12. Review

Borrower failed to preserve for appellate review its argument, in commercial foreclosure action, in support of its counterclaims that assignee of loan documents was not a holder in due course, where circuit court never ruled on issue in granting assignee’s motion for summary judgment on counterclaims, and borrower failed to specifically raise argument in motion to reconsider circuit court’s order. Hotel and Motel Holdings, LLC v. BJC Enterprises, LLC (S.C.App. 2015) 414 S.C. 635, 780 S.E.2d 263. Mortgages And Deeds Of Trust 2197

Borrower failed to preserve for appellate review its argument that lender mailed letter offering to renegotiate terms of promissory note secured by mortgages to address at which it knew borrower would not receive it; borrower did not assert argument until its motion to reconsider entry of summary judgment, borrower’s amended answer, counterclaims, and third‑party complaint did not make argument, and borrower did not make argument in its memorandum in opposition to lender’s motion for summary judgment or at motions hearing. Hotel and Motel Holdings, LLC v. BJC Enterprises, LLC (S.C.App. 2015) 414 S.C. 635, 780 S.E.2d 263. Mortgages And Deeds Of Trust 2197

Borrower failed to preserve for appellate review arguments regarding circuit court’s entry of summary judgment in commercial foreclosure action on its counterclaims for fraud, conversion, unfair trade practices, tortious interference with a contractual relationship, and intentional infliction of emotional distress; borrower failed to cite any authority in its argument on appeal, borrower’s argument as to certain counterclaims was limited to one sentence, and borrower presented one argument regarding fraud below and another on appeal. Hotel and Motel Holdings, LLC v. BJC Enterprises, LLC (S.C.App. 2015) 414 S.C. 635, 780 S.E.2d 263. Mortgages And Deeds Of Trust 2197; Mortgages And Deeds Of Trust 2216

Mortgagor failed to preserve for appellate review argument that series of e‑mails was admissible under business records exception to hearsay rule, in mortgagee’s foreclosure action against mortgagor, in which mortgagor filed counterclaims for tortious interference with a contract and breach of contract; mortgagor did not raise exception as basis for admissibility to trial court. First South Bank v. South Causeway, LLC (S.C.App. 2015) 414 S.C. 434, 778 S.E.2d 493. Mortgages And Deeds Of Trust 2197

Mortgagor was precluded from arguing on appeal that only reason it sought to introduce e‑mail, which was excluded as hearsay, between representative of mortgagee and representative of prospective buyer of commercial property was to establish notice on part of representative of mortgagee as to contents of e‑mail, in mortgagee’s foreclosure action against mortgagor, in which mortgagor filed counterclaims for tortious interference with a contract and breach of contract; at trial, mortgagor acknowledged that it sought to introduce e‑mail, at least in part, for truth of matter asserted. First South Bank v. South Causeway, LLC (S.C.App. 2015) 414 S.C. 434, 778 S.E.2d 493. Mortgages And Deeds Of Trust 2212

**SECTION 29‑3‑20.** Prior mortgages may be redeemed by second mortgagees.

 If it so happen there be more than one mortgage at the same time by any person to any person or persons of the same lands and tenements, the several mortgagees who have not registered or recorded their mortgages, their heirs, executors, administrators or assigns, may redeem any former mortgage registered upon payment of the principal debt, interest and cost of suit to the prior mortgagee, his heirs, executors, administrators or assigns.

HISTORY: 1962 Code Section 45‑52; 1952 Code Section 45‑52; 1942 Code Section 8886; 1932 Code Section 8886; Civ. C. ‘22 Section 5317; Civ. C. ‘12 Section 3547; Civ. C. ‘02 Section 2461; G. S. 1781; R. S. 1973; 1698 (2) 137.

Library References

Mortgages 594(5).

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 1006 to 1007, 1011 to 1019, 1022 to 1024.

NOTES OF DECISIONS

In general 1

1. In general

Where bank as holder of first mortgage expressly waived deficiency judgment against both plaintiffs, as original mortgagors, and defendant, as purchaser of property who assumed mortgage, defendant had no obligation to reimburse plaintiffs for expenses which occurred due to plaintiffs’ election to re‑acquire property, settle obligations, and resell, rather than permit foreclosure and thereafter pursue judgment upon defendant’s second mortgage and promissory note. Morris v. Peterson (S.C. 1977) 269 S.C. 693, 239 S.E.2d 727.

**SECTION 29‑3‑30.** Mortgagee may pay taxes.

 Any person holding a lien by way of, or an interest in the nature of, a mortgage upon any property, the subject of taxation, upon which the mortgagor shall have failed to pay the tax or upon which there may exist a lien for taxes on any other property of the mortgagor, may at any time before the sale thereof for delinquent taxes, as provided in Title 12, pay the tax on all the property of the mortgagor, with any costs, penalties or assessments which may have accrued thereon, and thereupon he shall be entitled, as against the mortgagor, his representatives, privies or assigns, to include the amount so paid, and all interest thereafter accruing thereon, in the debt secured by the mortgage. And if a mortgagee pay such taxes he shall have a first lien on the property subject to such tax to the extent of the taxes so paid with interest from the date of payment.

HISTORY: 1962 Code Section 45‑53; 1952 Code Section 45‑53; 1942 Code Section 2783; 1932 Code Section 2831; Civ. C. ‘22 Section 506; Civ. C. ‘12 Section 455; Civ. C. ‘02 Section 407; G. S. 277; R. S. 334; 1882 (17) 1028; 1900 (23) 352; 1922 (32) 927; 1943 (43) 126.

Library References

Mortgages 594(5).

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 1006 to 1007, 1011 to 1019, 1022 to 1024.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 146, Formal Acknowledgment of Repayment.

NOTES OF DECISIONS

In general 1

1. In general

By this section it is implied that the holder of mortgage has the right to obtain from the proper authorities the exact amount to be paid or else his statutory right to make payment would be incomplete. However, there is nothing in the law which makes compulsory on the city authorities the duty or obligation to furnish such information, and certainly nothing to render invalid a tax sale when the information was not furnished. Home Building & Loan Ass’n v. City of Spartanburg (S.C. 1937) 185 S.C. 313, 194 S.E. 139.

Amount paid for taxes on mortgaged land is a demand collateral to and dependent upon mortgage or judgment, and is not an independent right enforceable in separate action. First Carolinas Joint Stock Land Bank of Columbia v. McNiel (S.C. 1935) 177 S.C. 332, 181 S.E. 21. Mortgages And Deeds Of Trust 1829

Where second mortgagee paid taxes on mortgaged property, pending his foreclosure suit in which he did not join the first mortgagee and did not assert his right to statutory lien for taxes so paid, and decree made no allowance therefor, second mortgagee held not entitled to payment of such taxes from proceeds of sale of same land in first mortgagee’s subsequent foreclosure suit, where he actively participated in first sale and brought about situation by his own conduct. First Carolinas Joint Stock Land Bank of Columbia v. McNiel (S.C. 1935) 177 S.C. 332, 181 S.E. 21. Mortgages And Deeds Of Trust 1829

This section gives the mortgagee a legal remedy where the mortgagor fails to pay the taxes; hence equity will not interfere where the security is sufficient. Nathans v. Steinmeyer (S.C. 1900) 57 S.C. 386, 35 S.E. 733.

Applied in Interstate Building & Loan Ass’n v. Waters (S.C. 1897) 50 S.C. 459, 27 S.E. 948.

**SECTION 29‑3‑40.** Priority of certain advancements by mortgage.

 The holder of any mortgage of real property, when the mortgage contains provisions authorizing advancements thereunder for taxes, insurance premiums, public assessments and repairs, may make such advancements and, when made, they shall be secured by the mortgage and have the same rank and priority as the principal debt thereby secured and bear interest from the date of such advancements, as provided in the mortgage. Advancements made for taxes by any such mortgage holder shall be a first lien on the mortgaged real property to the extent of the taxes so paid with interest from the date of payment, regardless of the rank and priority of the mortgage under which such taxes are advanced.

HISTORY: 1962 Code Section 45‑54; 1952 Code Section 45‑54; 1942 Code Section 8712‑1; 1935 (39) 307; 1982 Act No. 385, Section 57(2)(a).

Editor’s Note

1982 Act No. 385, Section 1, provides as follows:

“Section 1. It is hereby explicitly stated by the terms of this act that the provisions of Title V Part A‑Mortgage Usury Laws, Mortgages, Section 501(a)(1), and Part B‑Business and Agricultural Loans, Sections 511 and 512 of Public Law No. 96‑221 (94 Stat. 132) known as the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, shall not apply with respect to loans, mortgages, credit sales and advances made in this State, and that this State does not want the provisions of Title V, Part A‑Mortgage Usury Laws, Mortgages, Section 501(a)(1) and Part B‑Business and Agricultural Loans, Sections 511 and 512 of the Depository Institutions Deregulation and Monetary Control Act of 1980 to apply with respect to loans, mortgages, credit sales and advances made in this State.”

CROSS REFERENCES

Payment of taxes by lienholders, see Section 15‑35‑830.

Library References

Mortgages 123, 124, 149.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 157, 203.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 17, Types of Obligations Secured.

S.C. Jur. Mortgages Section 36, Future Advances.

S.C. Jur. Mortgages Section 69, Obligation of Mortgagee.

S.C. Jur. Mortgages Section 145, Repayment of Obligation.

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:20, Future Advances.

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:39, Usury.

**SECTION 29‑3‑50.** Mortgage for future advances; mortgage or lien on property held by gas or electric utility or electric cooperative.

 (A) Any mortgage or other instrument conveying an interest in or creating a lien on any real estate, securing existing indebtedness or future advances to be made, regardless of whether the advances are to be made at the option of the lender, are valid from the day and hour when recorded so as to affect the rights of subsequent creditors, whether lien creditors or simple contract creditors, or purchasers for valuable consideration without notice to the same extent as if the advances were made as of the date of the execution of the mortgage or other instrument for the total amount of advances made thereunder, together with all other indebtedness and sums secured thereby, the total amount of existing indebtedness and future advances outstanding at any one time may not exceed the maximum principal amount stated therein, plus interest thereon, attorney’s fees and court costs. It is not necessary that the mortgage state as part of the maximum principal the amount of any deferred, accrued, or capitalized interest or discount of any nature or kind, whether the rate of interest or discount is fixed or variable pursuant to an alternative mortgage loan transaction as defined in Section 37‑1‑301(5), and the lien of the mortgage as to all that interest or discount shall have the same priority as the principal; provided, however, that the recorded mortgage discloses that interest or discount will be deferred, accrued, or capitalized. However, the lien of a person who has furnished labor, services, or material in connection with the construction of improvements to real property is superior to the lien of a recorded mortgage as to disbursements made after filing of the notice of the mechanic’s lien required by Section 29‑5‑90 and service of the notice on all prior recorded mortgage holders. Service of the notice on prior recorded mortgage holders must be made pursuant to Rule 4 of the South Carolina Rules of Civil Procedure. The priority of the mechanic’s lien extends only to the mortgage disbursements made after the filing of the lien and service of the notice on all prior recorded mortgage holders.

 (B) Any mortgage or other instrument which by its terms creates an interest in or a lien upon any real property interest held by a gas or electrical utility or electric cooperative, securing existing indebtedness or indebtedness to be incurred in the future, is valid from the day and hour when recorded. It affects and is prior to the rights of all creditors and purchasers for valuable consideration without notice and all liens except liens of record prior to recordation of the mortgage, regardless of whether there is an actual debt outstanding at the time of recordation of the mortgage, to the same extent as if the future indebtedness were incurred as of the date of the execution of the mortgage or other instrument for the total amount of indebtedness thereafter incurred, together with all other indebtedness and sums secured thereby. However, the total amount of existing indebtedness and future indebtedness at any one time may not exceed the maximum principal amount stated therein plus interest thereon, attorney’s fees and court costs, and the mortgage or other instrument must contemplate that future indebtedness may be incurred. The mortgage or other instrument shall remain a valid lien and effective as record notice thereof until satisfied or released of record even though there are periods during which no indebtedness is outstanding thereunder.

 Notwithstanding the above provisions, the lien of a person who has furnished labor, services, or materials in connection with the construction of improvements to real property is superior to the lien of a recorded mortgage as to indebtedness actually incurred after filing of the notice of the mechanic’s lien required by Section 29‑3‑90 and service of the notice on all prior recorded mortgage holders. Service of the notice on prior recorded mortgage holders must be made pursuant to Rule 4 of the South Carolina Rules of Civil Procedure. The priority of the mechanic’s lien extends only to the mortgage indebtedness actually incurred after the filing of the lien and service of the notice on all prior recorded mortgage holders.

HISTORY: 1962 Code Section 45‑55; 1952 Code Section 45‑55; 1942 Code Section 8712‑2; 1934 (38) 1475; 1960 (51) 1731; 1982 Act No. 466, Part II, Section 18; 1988 Act No. 635, Section 1; 1993 Act No. 141, Section 2.

Editor’s Note

1993 Act No. 141, Section 5, effective June 14, 1993, provides as follows:

“SECTION 5. The provisions provided for gas or electrical utilities or electric cooperatives in Sections 29‑1‑10, 29‑3‑50(B), 29‑3‑80, and 29‑3‑90 of this act shall be construed as cumulative authority and shall not be construed to impliedly repeal any existing laws affecting mortgages and liens of gas or electrical utilities or electric cooperatives.”

CROSS REFERENCES

Application of this section to lands donated for scenic rivers program, see Section 49‑29‑100.

Liens not being enforceable against existing recorded mortgages, see Section 29‑5‑70.

Library References

Mortgages 116.

Westlaw Topic No. 266.

C.J.S. Mortgages Section 154.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 17, Types of Obligations Secured.

S.C. Jur. Mortgages Section 102, Equitable.

Forms

South Carolina Legal and Business Forms Section 9:9 , Mortgage‑General Long Form‑Commercial Orientated.

South Carolina Legal and Business Forms Section 9:13 , Mortgage‑Leasehold.

South Carolina Legal and Business Forms Section 9:14 , Mortgage‑Third Party.

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:2, Alternative Mortgage Transactions.

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:20, Future Advances.

NOTES OF DECISIONS

In general 1

1. In general

The first mortgage attorney fee ranks prior to the second mortgage debt. Standard Sav. & Loan Asso. v Evans (1970) 255 SC 207, 178 SE2d 145. Hayden v Prevatte (1971, DC SC) 327 F Supp 635.

Statute providing that future advances by lender relate back to date of mortgage did not give bank’s mortgage priority over purchaser of lot’s equitable lien in amount of purchaser’s down payment to developer in bank’s foreclosure action against developer, even though bank made advances to developer after purchaser’s down payment check was deposited, where bank had knowledge of purchaser’s interest when bank made future advances. Regions Bank v. Wingard Properties, Inc. (S.C.App. 2011) 394 S.C. 241, 715 S.E.2d 348. Mortgages And Deeds Of Trust 1373

Advances made by a mortgagee subsequent to the execution of its mortgage are generally afforded the same priority against subsequent creditors as advances made contemporaneous with the execution of the mortgage; this priority is generally afforded by virtue of Sections 29‑3‑50 and 29‑5‑70. Thus, even if a mortgagee had notice of a remodeling contractor’s mechanic’s lien before it disbursed funds under the terms of its mortgage, such notice would not afford the mechanic’s lien priority over the disbursements. Glover v. Lewis (S.C.App. 1989) 299 S.C. 44, 382 S.E.2d 242.

An “open‑end” mortgage made in the form prescribed this section remains dormant and viable after the initial debt is paid unless canceled and secures advances made to the mortgagor after the initial debt is paid. Central Production Credit Ass’n v. Page (S.C. 1977) 268 S.C. 1, 231 S.E.2d 210.

An open‑end mortgage of record is prior to the interest of a subsequent grantee of the mortgaged land, even though the initial debt is paid. The grantee’s title is subject to the lien for future advances made to the mortgagor secured by the open‑end mortgage. Central Production Credit Ass’n v. Page (S.C. 1977) 268 S.C. 1, 231 S.E.2d 210.

Where husband paid loan secured by open end mortgage, but did not request cancellation, then deeded land to wife, then obtained second loan, wife’s interest was subject to the lien of the second loan secured by the uncancelled open end mortgage. Central Production Credit Ass’n v. Page (S.C. 1977) 268 S.C. 1, 231 S.E.2d 210.

An “open‑end” mortgage remains viable until the mortgagor requests cancellation. Central Production Credit Ass’n v. Page (S.C. 1977) 268 S.C. 1, 231 S.E.2d 210.

When there is no debt and no commitment for a loan, a mortgagee must cancel an open‑end mortgage when the mortgagor so requests. Central Production Credit Ass’n v. Page (S.C. 1977) 268 S.C. 1, 231 S.E.2d 210.

Lien of mortgage for advances made by first mortgagee after lien of junior mortgagee attached related back to original mortgage and had priority over lien of junior mortgagee. McMillen Feed Mills, Inc., of South Carolina v. Mayer (S.C. 1975) 265 S.C. 500, 220 S.E.2d 221.

As to priority between a mechanic’s lien and an advance made under a previously recorded mortgage, see Fulmer Bldg. Supplies, Inc. v. Martin (S.C. 1968) 251 S.C. 353, 162 S.E.2d 541.

**SECTION 29‑3‑70.** Limitation on requirement of casualty insurance by mortgagee.

 A bank, savings and loan association, financial institution, mortgage company, or any public or private mortgagee doing business in this State, when making a mortgage loan, may not require, as a condition or term of the mortgage, that the mortgagor purchase casualty insurance on property which is the subject of the mortgage in an amount in excess of the replacement cost of the buildings or appurtenances on the mortgaged premises.

HISTORY: 1988 Act No. 428, Section 1.

Library References

Mortgages 20.

Westlaw Topic No. 266.

C.J.S. Mortgages Section 102.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 65, Obligation to Insure.

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:22, Insurance.

**SECTION 29‑3‑80.** Effect of recording of mortgage or other instrument by gas or electric utility or electric cooperative; after‑acquired property; notice.

 Any mortgage or other instrument executed by a gas or electrical utility or electric cooperative transacting business in this State which by its terms creates a lien upon any real property interest then owned or thereafter acquired and which is recorded as a mortgage of real property in any county in which the property is located or is to be located shall have the same force and effect as if the mortgage or other instrument were also recorded or filed in the proper office in the county as a mortgage of personal property. Recordation of the mortgage or other instrument shall cause the lien thereof to attach to all after‑acquired property of the mortgagor of the nature therein described immediately upon the acquisition thereof by mortgagor and the lien is superior to all claims of creditors of the mortgagor and purchasers of these real property interests, except prior liens of record, affecting the property. The gas or electrical utility or electric cooperative shall file a notice in every county in which the utility intends to claim the benefit of this provision of law and referencing the book and page number of the mortgage or other instrument which is entitled to the benefit of this provision of law. Thereafter, there shall be no further document necessary to create or give notice of the lien upon the real property interest thereafter acquired by the gas or electrical utility or electric cooperative.

HISTORY: 1993 Act No. 141, Section 3.

Editor’s Note

1993 Act No. 141, Section 5, effective June 14, 1993, provides as follows:

“SECTION 5. The provisions provided for gas or electrical utilities or electric cooperatives in Sections 29‑1‑10, 29‑3‑50(B), 29‑3‑80, and 29‑3‑90 of this act shall be construed as cumulative authority and shall not be construed to impliedly repeal any existing laws affecting mortgages and liens of gas or electrical utilities or electric cooperatives.”

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assignments Section 5, Leases.

Treatises and Practice Aids

Restatement (3d) of Property (Mortgages) Section 7.5, Mortgaging After‑Acquired Real Estate.

**SECTION 29‑3‑90.** Description of property interests of gas or electric utility or electric cooperative.

 (A) Any real property or real property interests, including, without limitation, easements and rights‑of‑way, of any gas or electrical utility or electric cooperative which are intended to be subjected to the lien of any mortgage, indenture, or other type of real property security agreement, may be described in general terms and are operative and effective without the necessity of description of metes and bounds, references to plats, or other methods of description as commonly utilized in mortgages of this State. Without limiting or excluding other types of general descriptions which may be utilized for these purposes, it is sufficient if the property or property interests are described in the following words or their substantial equivalent:

 All real property and real property interests of \_\_\_\_\_\_\_\_\_\_, including, without limitation, lands, buildings, fixtures, easements, rights‑of‑way, leaseholds, and other interests, situate, lying, and being in any one or more of the counties of the State of South Carolina, as the same may be now or hereafter constituted or delineated, and whether now owned or acquired hereafter while the lien of this mortgage remains open and unsatisfied of record, SAVING, EXCEPTING, AND EXCLUDING THEREFROM THE FOLLOWING: \_\_\_\_\_\_\_\_\_\_.

 (B) The provisions of Section 30‑5‑35 relating to derivation clauses in deeds and mortgages do not apply to mortgages granted by gas or electrical utilities or electric cooperatives.

 (C) Without limiting the foregoing, it is also sufficient and effective to subject real property and real property interests of any gas or electrical utility or electric cooperative to the lien of any prior mortgage, indenture, or other similar real property security agreement executed by the utility by reference to the prior mortgage or other instrument and the inclusion of words in the deed or conveyance to the effect that the real property or real property interests will be upon acquisition by the grantee immediately and automatically subjected to the lien of the prior mortgage or other instrument.

 (D) Without limiting the effect of subsections (A), (B), and (C) above, it is also operative and effective to describe the real property or real property interests of any gas or electrical utility or electric cooperative being subjected to the lien of a mortgage, indenture, or other real property security agreement by referencing the property description or descriptions contained in any prior mortgage or other real property financing agreement executed by the utility, even though that prior mortgage or other instrument may be satisfied of record and notwithstanding the fact that the prior mortgage or other instrument encumbers real property or real property interests which have been subjected thereto by reference to a description contained in another instrument.

HISTORY: 1993 Act No. 141, Section 4.

Editor’s Note

1993 Act No. 141, Section 5, effective June 14, 1993, provides as follows:

“SECTION 5. The provisions provided for gas or electrical utilities or electric cooperatives in Sections 29‑1‑10, 29‑3‑50(B), 29‑3‑80, and 29‑3‑90 of this act shall be construed as cumulative authority and shall not be construed to impliedly repeal any existing laws affecting mortgages and liens of gas or electrical utilities or electric cooperatives.”

RESEARCH REFERENCES

Treatises and Practice Aids

Restatement (3d) of Property (Mortgages) Section 7.5, Mortgaging After‑Acquired Real Estate.

**SECTION 29‑3‑100.** Validity of certain assignments of rents, issues, or profits.

 (A) For purposes of this section the following definitions apply:

 (1) “Rents, issues, or profits” means all amounts payable by or on behalf of any lessee, tenant, or other person having a possessory interest in real property on account of or pursuant to any written or oral lease or other instrument evidencing a possessory interest in real property or pursuant to any form of tenancy implied by law, and all amounts payable by or on behalf of any licensee or permittee or other person occupying or using real property under license or permission from the owner or person entitled to possession. The term shall not include farm products, timber, the proceeds from the sale of farm products or timber, or the proceeds from the recovery or severance of any mineral deposits located on or under real property.

 (2) “Assignment of leases, rents, issues, or profits” means every document assigning, transferring, pledging, mortgaging, or conveying an interest in leases, licenses to real property, and rents, issues, or profits arising from real property, whether set forth in a separate instrument or contained in a mortgage, conditional sales contract, or other deed or instrument of conveyance.

 (3) “Collateral assignment” means any assignment of leases, rents, issues, or profits made and delivered in connection with the grant of any mortgage, or the execution of any conditional sales contract or in connection with any extension of credit made against the security of any interest in real property, where the assignor retains the right to collect or to apply the lease revenues, rents, issues, or profits after assignment and prior to default.

 (B) The recording of a written document containing an assignment of leases, rents, issues, or profits arising from real property is valid and enforceable from the time of recording to pass the interest granted, pledged assigned, or transferred as against the assignor, and is perfected from the time of recording against subsequent assignees, lien creditors, and purchasers for a valuable consideration from the assignor.

 (C) Where an assignment of leases, rents, issues, or profits is a collateral assignment, after a default under the mortgage, conditional sales contract, or evidence of indebtedness which the assignment secures, the assignee is thereafter entitled, but not required, to collect and receive any accrued and unpaid or subsequently accruing lease revenues, rents, issues, or profits subject to the assignment, without need for the appointment of a receiver, any act to take possession of the property, or any further demand on the assignor. Unless otherwise agreed, after default the assignee is entitled to notify the tenant or other obligor to make payment to him and is also entitled to take control of any proceeds to which he may be entitled. The assignee must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections.

 (D) This section shall not exclude other methods of creating, perfecting, collecting, sequestering, or enforcing a security interest in rents, issues, or profits provided by the law of this State.

HISTORY: 1993 Act No. 66, Section 1.

ARTICLE 5

Satisfaction and Release

**SECTION 29‑3‑310.** Request for entry of satisfaction.

 Any holder of record of a mortgage who has received full payment or satisfaction or to whom a legal tender has been made of his debts, damages, costs, and charges secured by mortgage of real estate shall, at the request by certified mail or other form of delivery with a proof of delivery of the mortgagor or of his legal representative or any other person being a creditor of the debtor or a purchaser under him or having an interest in any estate bound by the mortgage and on tender of the fees of office for entering satisfaction, within three months after the certified mail, or other form of delivery, with a proof of delivery, request is made, enter satisfaction in the proper office on the mortgage which shall forever thereafter discharge and satisfy the mortgage.

HISTORY: 1962 Code Section 45‑61; 1952 Code Section 45‑61; 1942 Code Section 8703; 1932 Code Section 8703; Civ. C. ‘22 Section 5224; Civ. C. ‘12 Section 3461; Civ. C. ‘02 Section 2375; G. S. 1791; R. S. 1894; 1817 (6) 61; 1928 (35) 1253; 1988 Act No. 494, Section 8(2); 1999 Act No. 67, Section 1.

Library References

Mortgages 313, 314.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 479, 488.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Lis Pendens Section 15, Actions to Satisfy Mortgages.

S.C. Jur. Mortgages Section 53, Form.

S.C. Jur. Mortgages Section 76, Due Date, Payment, and Tender.

S.C. Jur. Mortgages Section 145, Repayment of Obligation.

S.C. Jur. Mortgages Section 146, Formal Acknowledgment of Repayment.

S.C. Jur. Mortgages Section 148, Removal of Lien.

S.C. Jur. Mortgages Section 161, Statutory Remedies.

S.C. Jur. Mortgages Section 180, Satisfaction of Mortgage.

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:33, Release and Payoff.

LAW REVIEW AND JOURNAL COMMENTARIES

Mortgages—Consideration in a Valid Debt or Obligation—Are Either or Both Necessary to the Validity of a Mortgage? 19 S.C. L. Rev. 798.

Attorney General’s Opinions

Under this section, a president, vice‑president, secretary or treasurer would be preferred authorities to execute satisfactions of mortgages. 1976‑77 Op. Atty Gen, No. 77‑184, p 142.

NOTES OF DECISIONS

In general 1

Payment of attorney fees 2

Penalties 4

Request 3

Sufficiency of evidence 5

1. In general

Applied in Union Nat. Bank v Cook (1918) 110 SC 99, 96 SE 484. Welling v Eastern Bldg. & Loan Asso. (1899) 56 SC 280, 34 SE 409, error dismd 181 US 47, 45 L Ed 739, 21 S Ct 531. Peoples Nat. Bank v Upchurch (1937) 183 SC 147, 190 SE 515.

If fraudulent, the rights of subsequent purchaser without notice of fraud will be secure. City Council of Charleston v Ryan (1885) 22 SC 339 (superseded by statute on other grounds as stated in Sunamerica Financial Corp. v Equi‑Data, Inc. (App) 299 SC 175, 383 SE2d 8).

The satisfaction does not require two witnesses. City Council of Charleston v Ryan (1885) 22 SC 339 (superseded by statute on other grounds as stated in Sunamerica Financial Corp. v Equi‑Data, Inc. (App) 299 SC 175, 383 SE2d 8).

The statutory provision that affords a penalty against a holder of a mortgage who has received full payment or satisfaction, yet failed to record satisfaction upon request, is satisfied if the aggrieved party (1) makes a verbal or written request expressing his desire for the mortgagee to satisfy the mortgage and (2) demonstrates that the holder has received or agreed to this request. Regions Bank v. Strawn (S.C.App. 2012) 399 S.C. 530, 732 S.E.2d 230, rehearing denied, certiorari granted, affirmed 413 S.C. 206, 776 S.E.2d 72. Mortgages And Deeds Of Trust 1642

For liability to attach under the applicable penal statutes imposing a duty on the record holder of a mortgage on real estate to enter a satisfaction of the mortgage in the proper office upon the occurrence of certain conditions, payment of the mortgage is only the first step in the mortgage satisfaction process. Dykeman v. Wells Fargo Home Mortg., Inc. (S.C. 2009) 381 S.C. 333, 673 S.E.2d 804, rehearing denied. Mortgages And Deeds Of Trust 1169

Mortgagor’s mortgage pay‑off check, which was sent by certified mail, was not a “request” for mortgage satisfaction so as to trigger the mortgagee’s obligation under the recording statutes to tender mortgage satisfaction within three months, and therefore, mortgagor was not entitled to penalty damages for mortgagee’s failure to meet such obligation; the check did not convey mortgagor’s desire to have his mortgage recorded as satisfied. Bostic v. American Home Mortg. Servicing, Inc. (S.C.App. 2007) 375 S.C. 143, 650 S.E.2d 479. Mortgages And Deeds Of Trust 1642

The term “request” in recording statutes setting forth the obligations of a mortgagee to tender mortgage satisfaction following mortgagor’s request, does not mandate a particular format, instead, the request must operate to inform the mortgagee of the mortgagor’s desire for the satisfied mortgage to be recorded; once the mortgage has been satisfied and the mortgagor expresses this desire, it is incumbent upon the mortgagee to promptly record the extinguishment of the lien. Bostic v. American Home Mortg. Servicing, Inc. (S.C.App. 2007) 375 S.C. 143, 650 S.E.2d 479. Mortgages And Deeds Of Trust 1642

An “open‑end” mortgage to secure future advances remains dormant but viable after the initial debt is paid, unless the mortgagor requests cancellation in accordance with this section. Central Production Credit Ass’n v. Page (S.C. 1977) 268 S.C. 1, 231 S.E.2d 210.

When the initial debt is paid, and there is no commitment for a loan, a mortgagee must cancel an open‑end mortgage when the mortgagor so requests. Central Production Credit Ass’n v. Page (S.C. 1977) 268 S.C. 1, 231 S.E.2d 210.

Where a member borrows from a building and loan association, he ceases to be a member and is entitled to cancellation of mortgage on payment of money borrowed with interest, regardless of maturity of shares. Huggin v. People’s Building & Loan Ass’n (S.C. 1932) 165 S.C. 404, 163 S.E. 883. Building And Loan Associations 38(6)

Quoted in Reynolds v. Price (S.C. 1911) 88 S.C. 525, 71 S.E. 51.

Tender before maturity is not legal tender. Pyross v. Fraser (S.C. 1909) 82 S.C. 498, 64 S.E. 407, 129 Am.St.Rep. 901, 17 Am.Ann.Cas. 150.

Tender of debt, though past due, discharges lien of the mortgage. Salinas v. Ellis (S.C. 1887) 26 S.C. 337, 2 S.E. 121.

Endorsement on mortgage that lien is released is not the satisfaction required. Lynch v. Hancock (S.C. 1880) 14 S.C. 66.

2. Payment of attorney fees

Creditor was not required to discharge and satisfy mortgage, even though debtor paid the principal and interest due on the underlying note; note provided for reasonable attorney fees if note was placed with an attorney for collection, and full payment of the note, so as to trigger creditor’s statutory duty to discharge the mortgage, would not occur until such fees were paid. Rowell v. Whisnant (S.C.App. 2004) 360 S.C. 181, 600 S.E.2d 96, rehearing denied. Mortgages And Deeds Of Trust 1171

3. Request

For liability to attach for a failure of a holder of a mortgage that has received full payment or satisfaction to record satisfaction upon request, payment of the mortgage is only the first step in the mortgage satisfaction process; in order to recover the statutory penalty for such failure, the aggrieved party has to satisfy the condition precedent of making a request for the holder to record his mortgage as satisfied. Regions Bank v. Strawn (S.C.App. 2012) 399 S.C. 530, 732 S.E.2d 230, rehearing denied, certiorari granted, affirmed 413 S.C. 206, 776 S.E.2d 72. Mortgages And Deeds Of Trust 1642

A request, to trigger the statutory penalty against a holder of a mortgage who has received full payment or satisfaction, for failure to record satisfaction upon request, may not be implied or inferred; the request must affirmatively convey to the mortgagee that a recording of the satisfaction is sought. Regions Bank v. Strawn (S.C.App. 2012) 399 S.C. 530, 732 S.E.2d 230, rehearing denied, certiorari granted, affirmed 413 S.C. 206, 776 S.E.2d 72. Mortgages And Deeds Of Trust 1161; Mortgages And Deeds Of Trust 1642

The statutory provision that affords a penalty against a holder of a mortgage who has received full payment or satisfaction, yet failed to record satisfaction upon request, does not mandate a written request; the statute is satisfied if the aggrieved party (1) makes a verbal or written request expressing his desire for the holder to satisfy the mortgage and (2) demonstrates that the holder has received or agreed to this request. Regions Bank v. Strawn (S.C.App. 2012) 399 S.C. 530, 732 S.E.2d 230, rehearing denied, certiorari granted, affirmed 413 S.C. 206, 776 S.E.2d 72. Mortgages And Deeds Of Trust 1642

Bank was required to enter satisfaction of mortgage once subsequent purchaser’s devisees requested bank to do so, regardless of whether the mortgage was open‑ended, and the request was not made by the original mortgagor; a finding that an open‑ended mortgage died when there was currently no debt for it to secure would have limited recording statute’s beneficial use and defeated legislative intent, and as long as the mortgage was of record, any subsequent lien holder or purchaser would take with notice of the impact of statutory provision that allowed for a penalty for failing to record mortgage as satisfied. Regions Bank v. Strawn (S.C.App. 2012) 399 S.C. 530, 732 S.E.2d 230, rehearing denied, certiorari granted, affirmed 413 S.C. 206, 776 S.E.2d 72. Mortgages And Deeds Of Trust 1642

Mortgagors’ failure to make an affirmative request to have mortgage recorded as satisfied precluded recovery under penal statutes imposing a duty on mortgagee to enter a satisfaction of the mortgage in the proper office, even if mortgagors complied with all of the “borrower’s responsibilities” required by mortgagee and had a reasonable expectation that mortgagee would satisfy the mortgage of record following the payoff. Dykeman v. Wells Fargo Home Mortg., Inc. (S.C. 2009) 381 S.C. 333, 673 S.E.2d 804, rehearing denied. Mortgages And Deeds Of Trust 1642

To trigger the penalty under statutes imposing a duty on the record holder of a mortgage on real estate to enter a satisfaction of the mortgage in the proper office upon the occurrence of certain conditions, a request for recording may not be implied or inferred; the request must affirmatively convey to the mortgagee that a recording of the satisfaction is sought. Dykeman v. Wells Fargo Home Mortg., Inc. (S.C. 2009) 381 S.C. 333, 673 S.E.2d 804, rehearing denied. Mortgages And Deeds Of Trust 1642

Legislature intended a request, under penal statutes imposing a duty on the record holder of a mortgage on real estate to enter a satisfaction of the mortgage in the proper office upon the occurrence of certain conditions, to operate to inform the mortgagee of the mortgagor’s desire for the satisfied mortgage to be recorded. Dykeman v. Wells Fargo Home Mortg., Inc. (S.C. 2009) 381 S.C. 333, 673 S.E.2d 804, rehearing denied. Mortgages And Deeds Of Trust 1642

4. Penalties

Closing attorney’s authority to satisfy and cancel mortgage did not preclude application of statutory penalty against bank for failing to complete a proper request to satisfy the mortgage. Regions Bank v. Strawn (S.C.App. 2012) 399 S.C. 530, 732 S.E.2d 230, rehearing denied, certiorari granted, affirmed 413 S.C. 206, 776 S.E.2d 72. Mortgages And Deeds Of Trust 1642

Penal statutes imposing a duty on the record holder of a mortgage on real estate to enter a satisfaction of the mortgage in the proper office require the following elements be established by the mortgagor to trigger the substantial penalty and related relief:(1) that he has made full payment of his debts, including any applicable damages, costs, and charges, (2) that he has made a request by certified mail or other form of delivery that the mortgage be satisfied of record, (3) that he has made a tender of fees of office for entering satisfaction, and (4) that the mortgagee has failed to enter satisfaction in the proper office on the mortgage within three months of the request. Dykeman v. Wells Fargo Home Mortg., Inc. (S.C. 2009) 381 S.C. 333, 673 S.E.2d 804, rehearing denied. Mortgages And Deeds Of Trust 1169

5. Sufficiency of evidence

Evidence was sufficient to support trial court’s finding that bank failed to timely mark open‑end mortgage as satisfied, after subsequent purchaser’s attorney requested bank to do so and tendered to bank any necessary fees, in action by devisees against bank for failing to record mortgage as satisfied; attorney was authorized by statute to enter an affidavit of satisfaction when mortgage holder failed to do so, and the trial court heard testimony and granted judgment in favor of devisees based on bank’s failure to satisfy the mortgage within three months. Regions Bank v. Strawn (S.C. 2015) 413 S.C. 206, 776 S.E.2d 72. Mortgages And Deeds Of Trust 1178

Evidence was sufficient to support trial court’s finding that bank failed to timely mark mortgage as satisfied, after request to do so by subsequent purchaser’s devisees, in action by devisees against bank for failing to record mortgage as satisfied; closing attorney and one of his employees testified that they generated a satisfaction letter as part of standard procedure for a closing, attorney stated he reviewed the closing package, and the letter was included in it, and the trial court found it likely the bank had misplaced the letter based on the length of time before it checked its records. Regions Bank v. Strawn (S.C.App. 2012) 399 S.C. 530, 732 S.E.2d 230, rehearing denied, certiorari granted, affirmed 413 S.C. 206, 776 S.E.2d 72. Mortgages And Deeds Of Trust 1178

**SECTION 29‑3‑320.** Liability for failure to enter satisfaction.

 Any holder of record of a mortgage having received such payment, satisfaction, or tender as aforesaid who shall not, by himself or his attorney, within three months after such certified mail, or other form of delivery, with a proof of delivery, request and tender of fees of office, repair to the proper office and enter satisfaction as aforesaid shall forfeit and pay to the person aggrieved a sum of money not exceeding one‑half of the amount of the debt secured by the mortgage, or twenty‑five thousand dollars, whichever is less, plus actual damages, costs, and attorney’s fees in the discretion of the court, to be recovered by action in any court of competent jurisdiction within the State. And on judgment being rendered for the plaintiff in any such action, the presiding judge shall order satisfaction to be entered on the judgment or mortgage aforesaid by the clerk, register, or other proper officer whose duty it shall be, on receiving such order, to record it and to enter satisfaction accordingly.

 Notwithstanding any limitations under Sections 37‑2‑202 and 37‑3‑202, the holder of record of the mortgage may charge a reasonable fee at the time of the satisfaction not to exceed twenty‑five dollars to cover the cost of processing and recording the satisfaction or cancellation. If the mortgagor or his legal representative instructs the holder of record of the mortgage that the mortgagor will be responsible for filing the satisfaction, the holder of the mortgage shall mail or deliver the satisfied mortgage to the mortgagor or his legal representative with no satisfaction fee charged.

HISTORY: 1962 Code Section 45‑62; 1952 Code Section 45‑62; 1942 Code Section 8704; 1932 Code Section 8704; Civ. C. ‘22 Section 5225; Civ. C. ‘12 Section 3461; Civ. C. ‘02 Section 2376; G. S. 1792; R. S. 1895; 1817 (6) 61; 1999 Act No. 67, Section 2.

Library References

Mortgages 312.

Westlaw Topic No. 266.

C.J.S. Mortgages Section 483.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Lis Pendens Section 15, Actions to Satisfy Mortgages.

S.C. Jur. Mortgages Section 76, Due Date, Payment, and Tender.

S.C. Jur. Mortgages Section 148, Removal of Lien.

S.C. Jur. Mortgages Section 151, Persons and Entities Authorized to Release or Satisfy a Mortgage.

S.C. Jur. Mortgages Section 161, Statutory Remedies.

S.C. Jur. Mortgages Section 180, Satisfaction of Mortgage.

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:33, Release and Payoff.

NOTES OF DECISIONS

In general 1

Penalties 3

Request 2

1. In general

Applied in Bacot v South Carolina Loan & Trust Co. (1925) 132 SC 340, 127 SE 562 (ovrld on issue of implied authority of agent to receive mortgage payments by Crystal Ice Co. v First Colonial Corp., 273 SC 306, 257 SE2d 496) and (not followed by First Palmetto State Bank & Trust Co. v Simkins (App) 296 SC 345, 372 SE2d 592, 7 UCCRS2d 504). Welling v Eastern Bldg. & Loan Asso. (1899) 56 SC 280, 34 SE 409, error dismd 181 US 47, 45 L Ed 739, 21 S Ct 531.

Cited in McFaddin v Bland (1928) 147 SC 27, 144 SE 592. Salinas v Ellis (1887) 26 SC 337, 2 SE 121.

Where penalty has been recovered, the question of subsistence of mortgage in suit for foreclosure is res judicata. Eastern Building & Loan Ass’n v. Welling, 1902, 116 F. 100.

For liability to attach under the applicable penal statutes imposing a duty on the record holder of a mortgage on real estate to enter a satisfaction of the mortgage in the proper office upon the occurrence of certain conditions, payment of the mortgage is only the first step in the mortgage satisfaction process. Dykeman v. Wells Fargo Home Mortg., Inc. (S.C. 2009) 381 S.C. 333, 673 S.E.2d 804, rehearing denied. Mortgages And Deeds Of Trust 1169

In action to cancel mortgage upon payment, the plaintiff may recover penalty but not attorney’s fees. Huggin v. People’s Building & Loan Ass’n (S.C. 1932) 165 S.C. 404, 163 S.E. 883.

Additional related cases, see Kaphan v Ryan (1882) 16 SC 352. Reynolds v. Price (S.C. 1911) 88 S.C. 525, 71 S.E. 51.

2. Request

A request, to trigger the statutory penalty against a holder of a mortgage who has received full payment or satisfaction, for failure to record satisfaction upon request, may not be implied or inferred; the request must affirmatively convey to the mortgagee that a recording of the satisfaction is sought. Regions Bank v. Strawn (S.C.App. 2012) 399 S.C. 530, 732 S.E.2d 230, rehearing denied, certiorari granted, affirmed 413 S.C. 206, 776 S.E.2d 72. Mortgages And Deeds Of Trust 1161; Mortgages And Deeds Of Trust 1642

Bank was required to enter satisfaction of mortgage once subsequent purchaser’s devisees requested bank to do so, regardless of whether the mortgage was open‑ended, and the request was not made by the original mortgagor; a finding that an open‑ended mortgage died when there was currently no debt for it to secure would have limited recording statute’s beneficial use and defeated legislative intent, and as long as the mortgage was of record, any subsequent lien holder or purchaser would take with notice of the impact of statutory provision that allowed for a penalty for failing to record mortgage as satisfied. Regions Bank v. Strawn (S.C.App. 2012) 399 S.C. 530, 732 S.E.2d 230, rehearing denied, certiorari granted, affirmed 413 S.C. 206, 776 S.E.2d 72. Mortgages And Deeds Of Trust 1642

Mortgagors’ failure to make an affirmative request to have mortgage recorded as satisfied precluded recovery under penal statutes imposing a duty on mortgagee to enter a satisfaction of the mortgage in the proper office, even if mortgagors complied with all of the “borrower’s responsibilities” required by mortgagee and had a reasonable expectation that mortgagee would satisfy the mortgage of record following the payoff. Dykeman v. Wells Fargo Home Mortg., Inc. (S.C. 2009) 381 S.C. 333, 673 S.E.2d 804, rehearing denied. Mortgages And Deeds Of Trust 1642

To trigger the penalty under statutes imposing a duty on the record holder of a mortgage on real estate to enter a satisfaction of the mortgage in the proper office upon the occurrence of certain conditions, a request for recording may not be implied or inferred; the request must affirmatively convey to the mortgagee that a recording of the satisfaction is sought. Dykeman v. Wells Fargo Home Mortg., Inc. (S.C. 2009) 381 S.C. 333, 673 S.E.2d 804, rehearing denied. Mortgages And Deeds Of Trust 1642

Legislature intended a request, under penal statutes imposing a duty on the record holder of a mortgage on real estate to enter a satisfaction of the mortgage in the proper office upon the occurrence of certain conditions, to operate to inform the mortgagee of the mortgagor’s desire for the satisfied mortgage to be recorded. Dykeman v. Wells Fargo Home Mortg., Inc. (S.C. 2009) 381 S.C. 333, 673 S.E.2d 804, rehearing denied. Mortgages And Deeds Of Trust 1642

3. Penalties

Closing attorney’s authority to satisfy and cancel mortgage did not preclude application of statutory penalty against bank for failing to complete a proper request to satisfy the mortgage. Regions Bank v. Strawn (S.C.App. 2012) 399 S.C. 530, 732 S.E.2d 230, rehearing denied, certiorari granted, affirmed 413 S.C. 206, 776 S.E.2d 72. Mortgages And Deeds Of Trust 1642

For liability to attach for a failure of a holder of a mortgage that has received full payment or satisfaction to record satisfaction upon request, payment of the mortgage is only the first step in the mortgage satisfaction process; in order to recover the statutory penalty for such failure, the aggrieved party has to satisfy the condition precedent of making a request for the holder to record his mortgage as satisfied. Regions Bank v. Strawn (S.C.App. 2012) 399 S.C. 530, 732 S.E.2d 230, rehearing denied, certiorari granted, affirmed 413 S.C. 206, 776 S.E.2d 72. Mortgages And Deeds Of Trust 1642

Penal statutes imposing a duty on the record holder of a mortgage on real estate to enter a satisfaction of the mortgage in the proper office require the following elements be established by the mortgagor to trigger the substantial penalty and related relief:(1) that he has made full payment of his debts, including any applicable damages, costs, and charges, (2) that he has made a request by certified mail or other form of delivery that the mortgage be satisfied of record, (3) that he has made a tender of fees of office for entering satisfaction, and (4) that the mortgagee has failed to enter satisfaction in the proper office on the mortgage within three months of the request. Dykeman v. Wells Fargo Home Mortg., Inc. (S.C. 2009) 381 S.C. 333, 673 S.E.2d 804, rehearing denied. Mortgages And Deeds Of Trust 1169

**SECTION 29‑3‑330.** Methods of satisfaction or release of security interest; affidavit.

 (A) In this section these words shall have the following meaning:

 (1) “Mortgage” means a lien against real property that is granted to secure the payment of money; a deed of trust must be given the same meaning as a “mortgage”.

 (2) “Register” means the official, including the register of deeds, register of mense conveyances or clerk of court charged with the recording and indexing duties in Chapter 5, Title 30.

 (3) “Release” means an instrument releasing all real property encumbered from the lien of the mortgage.

 (4) “Satisfaction” means a discharge signed by the mortgagee of record, the trustee of a deed of trust, or by an agent or officer, legal representative, or attorney‑in‑fact under a written instrument duly recorded, of either of the foregoing indicating that the property subject to the security instrument is released.

 (5) “Security instrument” means any mortgage, deed of trust, or other written instrument securing the payment of money and being a lien upon real property.

 (B) A security instrument may be satisfied or released by any of the following methods:

 (1) The mortgagee of record, the owner or holder of the mortgage, the trustee of a deed of trust, or the legal representative, agent or officer, or attorney‑in‑fact, under a written instrument duly recorded of any of the foregoing, may exhibit the security instrument to the register who has charge of the recording of the security instrument and then in the presence of the register write across the face of the record of the security instrument the words “The debt secured is paid in full and the lien of this instrument is satisfied”, “The lien of this instrument has been released”, or words of like meaning and date the notation and sign it. The signature must be witnessed by the register.

 (2) The satisfaction or release of the security instrument may be written upon or attached to the original security instrument and executed by any person above named in the presence of two witnesses and acknowledged, in which event the satisfaction or release must be recorded across the face of the record of the original instrument.

 (3) The mortgagee of record, the trustee of a deed of trust, or an agent or officer, legal representative, or attorney‑in‑fact, under a written instrument duly recorded, of either of the foregoing, may execute a satisfaction or release of a mortgage or deed of trust. Any person executing such satisfaction or release which is false is guilty of perjury and subject to Section 16‑9‑10 and must be liable for damages that any person may sustain as a result of the false affidavit, including reasonable attorney’s fees incurred in connection with the recovery of such damages. This satisfaction or release must be signed in the presence of two witnesses, acknowledged, and must be in substantially the same form as follows:

 “STATE OF SOUTH CAROLINA MORTGAGE/DEED OF TRUST SATISFACTION

 PURSUANT TO SECTION 29‑3‑330(B)(3) OF THE SOUTH CAROLINA CODE OF LAWS, 1976

 The undersigned being the mortgagee of record, the trustee of a deed of trust, or the legal representative, agent or officer, or attorney‑in‑fact of the mortgagee of record or the trustee of the trust, under a written agreement duly recorded, of either of the foregoing, certifies:

 The debt secured by the mortgage/deed of trust recorded in the office of the Clerk of Court or Register of Deeds of \_\_\_\_\_\_\_\_\_\_\_\_ County in book \_\_\_\_\_\_ at page \_\_\_\_\_\_ is:

 [ ] paid in full and the lien or the foregoing instrument has been released; or

 [ ] the lien of the foregoing instrument has been released.

 The Clerk of Court or Register of Deeds may enter this cancellation into record.

 Under penalties of perjury, I declare that I have examined this affidavit this \_\_\_day of \_\_\_\_\_\_\_\_ and, to the best of my knowledge and belief, it is true, correct, and complete.

 WITNESS my/our hand this \_\_\_ day of \_\_\_\_, 20 \_\_\_.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Signature)

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Witness Signature)

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Witness Signature)

 State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_

 This instrument was acknowledged before me this (date) by (name of officer/authorized signer, title of officer/authorized signer), of (name of corporation/entity acknowledging), a (type of entity and state or place of incorporation/formation), on behalf of the corporation/entity.

 Signature of Notary \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public, State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Printed Name of Notary \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”

 This notary acknowledgment form does not preclude the use of any other form of acknowledgment permitted by South Carolina law. The filing of this satisfaction shall satisfy or release the lien of the mortgage or deed of trust. Upon presentation, the register shall record this satisfaction or release pursuant to Section 29‑3‑330(B)(3) and mark the mortgage or deed of trust satisfied or released of record.

 (4) If the security instrument was recorded in counterparts, the original security instrument need not be presented and the satisfaction or release of it may be evidenced by an instrument of satisfaction or release, which may be executed in counterparts, by the mortgagee, the holder of the mortgage, the legal representative, agent or officer, or the attorney‑in‑fact under a written instrument duly recorded. Upon presentation of the instrument of satisfaction or release, or a counterpart of it, the register shall record the same.

 (5) Any licensed attorney admitted to practice in the State of South Carolina who can provide proof of payment of funds by evidence of payment made payable to the mortgagee, holder of record, servicer, or other party entitled to receive payment may record, or cause to be recorded, an affidavit, in writing, duly executed in the presence of two witnesses and acknowledged pursuant to the Uniform Recognition of Acknowledgments Act in Chapter 3, Title 26, which states that full payment of the balance or payoff amount of the security instrument has been made and that evidence of payment from the mortgagee, assignee, or servicer exists. This affidavit, duly recorded in the appropriate county, shall serve as notice of satisfaction of the mortgage and release of the lien upon the real property. The filing of the affidavit must be sufficient to satisfy or release the lien. Upon presentation of the instrument of satisfaction or release, the register must record the same. This section may not be construed to require an attorney to record an affidavit pursuant to this item or to create liability for failure to file such affidavit. The licensed attorney signing any such instrument which is false is guilty of perjury and subject to Section 16‑9‑10 and shall be liable for damages that any person may sustain as a result of the false affidavit, including reasonable attorney’s fees incurred in connection with the recovery of such damages. The affidavit referred to in this item shall be as follows:

|  |  |
| --- | --- |
|  |  |
| “STATE OF SOUTH CAROLINA | MORTGAGE LIEN |
| COUNTY OF \_\_\_\_\_\_\_\_\_\_\_ | SATISFACTION AFFIDAVIT |
|   | PURSUANT TO SECTION 29‑3‑330 |
|   | OF SC CODE OF LAWS, 1976 |
|   | FOR BOOK \_\_\_\_ PAGE \_\_\_\_\_ |

 The undersigned on oath, being first duly sworn, hereby certifies as follows:

 1. The undersigned is a licensed attorney admitted to practice in the State of South Carolina.

 2. That with respect to the mortgage or deed of trust given by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_ and recorded in the offices of the Clerk of Court or Register of Deeds in book \_\_\_\_\_\_\_\_\_ at page \_\_\_\_\_\_\_\_:

 a. [ ] That the undersigned was given written payoff information and made such payoff and is in possession of a canceled check or other evidence of payment to the mortgagee, holder of record, or representative servicer.

 b. [ ] That the undersigned was given written payoff information and made such payoff by wire transfer or other electronic means to the mortgagee, holder of record, or representative servicer and has confirmation from the undersigned’s bank of the transfer to the account provided by the mortgagee, holder of record, or representative servicer.

 Under penalties of perjury, I declare that I have examined this affidavit this \_\_\_ day of \_\_\_\_ and, to the best of my knowledge and belief, it is true, correct, and complete.

|  |  |  |
| --- | --- | --- |
|  |  |  |
|   |   |   |
| (Witness) |   | (Signature) |
|   |   |   |
| (Witness) |   | (Name—Please Print) |
|   |   |   |

|  |  |
| --- | --- |
|  |  |
|   |   |
|   | (Attorney’s S.C. Bar number) |
|   |   |
| STATE OF SOUTH CAROLINA | ACKNOWLEDGEMENT |
| COUNTY OF  |   |

 The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_ by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public for South Carolina

 My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”

 Upon presentation to the office of the Register of Deeds, the register is directed to record pursuant to Section 29‑3‑330(B)(3) and mark the mortgage or deed of trust satisfied or released of record.

HISTORY: 1962 Code Section 45‑65; 1952 Code Section 45‑65; 1942 Code Section 8702; 1932 Code Section 8702; 1924 (33) 929; 1925 (34) 83; 1930 (36) 1283; 1940 (41) 1844; 1964 (53) 1727; 1988 Act No. 494, Section 8(3); 1994 Act No. 382, Section 2; 1994 Act No. 478, Section 1; 1999 Act No. 67, Section 3; 2005 Act No. 73, Section 1; 2011 Act No. 19, Section 1, eff May 9, 2011; 2014 Act No. 198 (H.3134), Section 1, eff June 2, 2014.

Effect of Amendment

The 2011 amendment in subsection (c)(i) substituted “acknowledged pursuant to the Uniform Recognition of Acknowledgments Act in Chapter 3, Title 26,” for “probated”; and in subsection (e) substituted “acknowledged pursuant to the Uniform Recognition of Acknowledgments Act in Chapter 3, Title 26,” for “probated or acknowledged”; and amended the form.

2014 Act No. 198, Section 1, rewrote the section.

Library References

Mortgages 313, 314.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 479, 488.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Lis Pendens Section 15, Actions to Satisfy Mortgages.

S.C. Jur. Mortgages Section 146, Formal Acknowledgment of Repayment.

S.C. Jur. Mortgages Section 155, Statutory Requirements.

S.C. Jur. Mortgages Section 158, Original Instrument.

S.C. Jur. Mortgages Section 159, Lost Mortgage.

S.C. Jur. Mortgages Section 180, Satisfaction of Mortgage.

Forms

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

South Carolina Legal and Business Forms Section 9:39 , Mortgage Lien Satisfaction Affidavit.

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:33, Release and Payoff.

Attorney General’s Opinions

Discussion of the electronic recording of mortgage satisfactions in situations where the original mortgage, deed of trust, or other instrument securing payment has been lost or destroyed. S.C. Op.Atty.Gen. (August 12, 2013) 2013 WL 4636666.

The recording officer should determine whether the mortgage satisfaction has been executed by the current holder of the mortgage prior to recording a mortgage satisfaction. Where two mortgages appear of record, the satisfaction must be entered by the two mortgagees. 1992 Op. Atty Gen No 92‑61.

Register of mesne conveyances is not required to record cancellation of mortgage which has been signed by mortgagees but not by recorded assignees of mortgage. 1985 Op. Atty Gen, No. 85‑29, p 97.

**SECTION 29‑3‑340.** Certificate of satisfaction.

 The recording officer or his deputy shall enter on the original mortgage, deed of trust, or other instrument securing the payment and being a lien upon real property when it is produced before him a certificate that a satisfaction has been entered of record and the date of the entry.

HISTORY: 1962 Code Section 45‑66; 1952 Code Section 45‑66; 1942 Code Section 8702; 1932 Code Section 8702; 1924 (33) 929; 1925 (34) 83; 1930 (36) 1283; 1940 (41) 1844; 1988 Act No. 494, Section 8(4).

Library References

Mortgages 314.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 479, 488.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 180, Satisfaction of Mortgage.

Attorney General’s Opinions

The recording officer should determine whether the mortgage satisfaction has been executed by the current holder of the mortgage prior to recording a mortgage satisfaction. Where two mortgages appear of record, the satisfaction must be entered by the two mortgagees. 1992 Op. Atty Gen No 92‑61.

**SECTION 29‑3‑345.** Document of rescission.

 (A) In this section, “document of rescission” means a document stating that an identified satisfaction or affidavit of satisfaction of a mortgage or other lien affecting real property was recorded erroneously or that a mortgage or other lien affecting real property was satisfied of record erroneously, the secured obligation remains unsatisfied, and the mortgage or other lien affecting real property remains in force.

 (B) If a satisfaction or affidavit of satisfaction of a mortgage or other lien affecting real property is recorded in error or a mortgage or other lien affecting real property is satisfied of record erroneously by another means, a document of rescission that has been duly witnessed and notarized in compliance with Section 30‑5‑30 may be executed and recorded. Upon recording, the document of rescission rescinds the erroneously recorded satisfaction or affidavit and the erroneous satisfaction of record of the mortgage or other lien affecting real property and reinstates the mortgage or other lien affecting real property as of the mortgage’s original filing date. The clerk of court, register of deeds, or registrar of mesne conveyance shall index the document of rescission as of the date of filing.

 (C)(1) A recorded document of rescission has no effect and does not constitute a lien as to the rights of any grantee or lien creditor, their heirs, successors, or assigns who records an interest in the real property described in a mortgage or other lien affecting real property after the recording of the satisfaction or affidavit of satisfaction of the mortgage, or other lien affecting real property and before the recording of the document of rescission, with a grantee under deed of title taking the property free and clear of the mortgage or other lien that was erroneously satisfied if the deed of title was received during the time period between the recording of the erroneous satisfaction and the end of the next business day observed at the clerk of court, register of deeds, or registrar of mesne conveyance’s office following the recording of the document of rescission; and

 (2) any person or entity otherwise having priority over or taking free of the lien created by the mortgage or other lien affecting real property as reinstated.

 (D) A creditor who erroneously or wrongfully records a document of rescission is liable to a person injured by the recording for a sum of money not exceeding one‑half of the original face amount of the debt secured by the mortgage or twenty‑five thousand dollars, whichever is less, plus actual damages, costs, and attorney’s fees.

 (E) The clerk of court, register of deeds, or registrar of mesne conveyance shall collect a filing fee of six dollars, and an additional one dollar per page for a document containing more than one page.

 (F) The “document of rescission” must be in a form substantially similar to:

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
|   | STATE OF SOUTH CAROLINA | ) | DOCUMENT OF RESCISSION |
|   | COUNTY OF  | ) | AFFIDAVIT |

For Book \_\_\_\_\_, Page \_\_\_\_\_\_

Pursuant to Section 29‑3‑345 of S. C. Code of Laws

 The undersigned on oath, being first duly sworn, hereby certifies as follows:

 1. The undersigned is an authorized representative of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the identified mortgagee/lien holder of the mortgage/lien (“Mortgage”) filed at Book \_\_\_\_\_, Page \_\_\_\_\_ in the above‑referenced County.

 2. With respect to the Mortgage, given by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_\_\_\_\_\_ and recorded in the above County in the Office of the Register of Deeds, this is to represent and certify that the mortgagee inadvertently and mistakenly marked the Mortgage as paid and/or satisfied and filed that document in the records of the County aforesaid.

 3. This is to represent and certify that such satisfaction was erroneous and inadvertent, with the obligation secured by the Mortgage remaining unsatisfied and outstanding and the referenced Mortgage remains in force and effect.

 4. Pursuant to Section 29‑3‑345, the Mortgage is reinstated.

|  |  |
| --- | --- |
|  |  |
|   |   |
|   | By: |
|   | Its: |
|   | Street Address: |
|   | City, State and Zip Code: |
|   | Telephone: |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Witness

 Personally appeared before me \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ who with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ did witness and does acknowledge the due execution of the foregoing instrument.

 Witness my hand and seal

 the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(L.S.)

Notary Public for:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My Commission Expires:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

HISTORY: 2008 Act No. 328, Section 1, eff June 16, 2008.

RESEARCH REFERENCES

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:33, Release and Payoff.

**SECTION 29‑3‑350.** Entry of cancellation on indexes.

 All registers of deeds and all clerks of court in counties in which the clerks are required to perform the duties of registers of deeds shall enter the word “canceled”, together with the signature of the officer, upon the margin or across the indexes of real estate mortgages and chattel mortgages, respectively, when the real estate mortgage or chattel mortgage is duly canceled of record by the mortgagee or his assignee. The cancelation and signature must be entered in the margin opposite the names of the mortgagor and mortgagee, respectively, or across these names. A like cancelation, on the demand of the mortgagor or legal representative, must be made on mortgages heretofore canceled of record. In lieu of the above requirements, the register of deeds or clerk of court may insert an appropriate column on the same page in these indexes showing the book and page number, if any, of the satisfaction or cancelation. Upon failure of the register of deeds or clerk of court to comply with this section, in each instance he shall forfeit and pay to the mortgagor the sum of ten dollars to be recovered in any court of competent jurisdiction.

 Any clerk or other officer wilfully violating this section, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days, in the discretion of the court, and the solicitor of each circuit shall see that the law is complied with or shall prosecute violators.

HISTORY: 1962 Code Section 45‑67; 1952 Code Section 45‑67; 1942 Code Section 8709; 1932 Code Section 8709; Civ. C. ‘22 Section 5230; Cr. C. ‘22 Section 536; Civ. C. ‘12 Section 3466; 1910 (26) 587; 1911 (27) 164; 1912 (27) 628; 1988 Act No. 494, Section 8(5); 1988 Act No. 585, Section 1.

Code Commissioner’s Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to “Register of Mesne Conveyances” to “Register of Deeds” wherever appearing in the 1976 Code of Laws.

Library References

Mortgages 314.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 479, 488.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 146, Formal Acknowledgment of Repayment.

Attorney General’s Opinions

The recording officer should determine whether the mortgage satisfaction has been executed by the current holder of the mortgage prior to recording a mortgage satisfaction. Where two mortgages appear of record, the satisfaction must be entered by the two mortgagees. 1992 Op. Atty Gen No 92‑61.

Upon receipt for recordation of a court order cancelling a mortgage which is regular on its face, the Clerk of Court or Register of Mesne Conveyances should always obey the said order and thereby immediately cancel the mortgage and its index entry according to statutory provisions. 1976‑77 Op. Atty Gen, No. 77‑377, p 266.

**SECTION 29‑3‑360.** Application for rule to show cause why satisfaction must not be entered.

 Any person who is indebted by mortgage on real estate may apply to the presiding judge or any court of general sessions and common pleas to be held in the county in which the mortgage on real estate is recorded for a rule to show cause why satisfaction must not be entered thereon.

HISTORY: 1962 Code Section 45‑67.1; 1952 Code Section 45‑67.1; 1942 Code Section 8705; 1932 Code Section 8705; Civ. C. ‘22 Section 5226; Civ. C. ‘12 Section 3462; Civ. C. ‘02 Section 2377; G. S. 1793; R. S. 1896; 1817 (6) 61; 1988 Act No. 494, Section 8(6).

Library References

Mortgages 311.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 478, 482.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Lis Pendens Section 15, Actions to Satisfy Mortgages.

S.C. Jur. Mortgages Section 148, Removal of Lien.

S.C. Jur. Mortgages Section 153, Order of Court.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Lisenby v. Newsom (S.C. 1959) 234 S.C. 237, 107 S.E.2d 449.

Cited in Clanton v. Clanton (S.C. 1956) 229 S.C. 356, 92 S.E.2d 878.

**SECTION 29‑3‑370.** Proceedings where rule to show cause issues.

 Such judge shall grant such rule, returnable on a day to be fixed by him. The rule shall be served on the mortgagee, his legal representative or assignee or the attorney of any thereof, and if the party so served shall not attend to show cause or, attending, shall show insufficient cause and the judge shall be satisfied that the mortgage has been fully paid he shall order the proper officer to enter satisfaction on the mortgage.

HISTORY: 1962 Code Section 45‑67.2; 1952 Code Section 45‑67.2; 1942 Code Section 8706; 1932 Code Section 8706; Civ. C. ‘22 Section 5227; Civ. C. ‘12 Section 3463; Civ. C. ‘02 Section 2378; G. S. 1794; R. S. 1897; 1817 (6) 61.

Library References

Mortgages 311.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 478, 482.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 148, Removal of Lien.

S.C. Jur. Mortgages Section 153, Order of Court.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Clanton v. Clanton (S.C. 1956) 229 S.C. 356, 92 S.E.2d 878.

**SECTION 29‑3‑380.** Submission to jury to decide whether mortgage paid.

 If, on the return of the rule, it shall appear to the presiding judge that matters proper for the decision of a jury are involved in the case he may, at the request of either party, submit it to a jury, to be decided immediately in a summary manner. If the jury shall decide that the mortgage has been paid, satisfaction shall be ordered accordingly.

HISTORY: 1962 Code Section 45‑67.3; 1952 Code Section 45‑67.3; 1942 Code Section 8707; 1932 Code Section 8707; Civ. C. ‘22 Section 5228; Civ. C. ‘12 Section 3464; Civ. C. ‘02 Section 2379; G. S. 1795; R.S. 1898; 1817 (6) 61.

Library References

Mortgages 311.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 478, 482.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 153, Order of Court.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Clanton v. Clanton (S.C. 1956) 229 S.C. 356, 92 S.E.2d 878.

**SECTION 29‑3‑390.** Alternative procedure for rule to show cause against satisfaction.

 When the debt or any other obligation secured by any mortgage on real estate has been fully paid, released, satisfied, discharged, or extinguished or when the lien of any mortgage on real estate has been released, discharged, or extinguished and for any reason the mortgage or the record of the mortgage in the office of the register of deeds or clerk of court has not been satisfied and cancelled, the mortgagor or his legal representatives may, upon a verified petition against the mortgagee, his legal representatives, assignees, pledgees of record, and any other person having any right, title, or interest in or lien upon the mortgage, reciting the facts and circumstances in relation to the mortgage and the satisfaction, release, discharge, or extinguishment of the debt or obligation secured thereby or of the lien thereof, apply to the court of common pleas or any judge of the Court of Common Pleas in open court or at chambers for a rule to show cause why an order should not be granted directing that the mortgage or record of the mortgage be satisfied and cancelled of record.

HISTORY: 1962 Code Section 45‑68; 1952 Code Section 45‑68; 1942 Code Section 8707‑1; 1933 (38) 467; 1988 Act No. 494, Section 8(7).

Code Commissioner’s Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to “Register of Mesne Conveyances” to “Register of Deeds” wherever appearing in the 1976 Code of Laws.

Library References

Mortgages 311.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 478, 482.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 148, Removal of Lien.

S.C. Jur. Mortgages Section 153, Order of Court.

NOTES OF DECISIONS

In general 1

1. In general

This section provides an alternate method for petitioning the court to have a mortgage satisfied of record and is a cumulative remedy to the remedy to the procedure provided for in what are now Sections 29‑3‑360 to 29‑3‑380. Clanton v. Clanton (S.C. 1956) 229 S.C. 356, 92 S.E.2d 878.

Where there was no effective appeal from the order of the trial judge fixing the procedure for the trial of issues raised as to payment of mortgage, exceptions posing the question of whether or not a party was entitled to a trial by jury could not be considered on appeal. Clanton v. Clanton (S.C. 1956) 229 S.C. 356, 92 S.E.2d 878.

**SECTION 29‑3‑400.** Entry in index to lis pendens.

 Upon the filing of the petition in the office of the clerk of the court of common pleas, the clerk shall immediately enter it in the index to lis pendens affecting real property and from the time of the filing the pendency of the action or special proceedings is constructive notice to an assignee, pledgee, purchaser, or encumbrancer of the mortgage, and every person whose purchase, encumbrance, assignment, pledge, or hypothecation is subsequently executed or subsequently recorded is considered a subsequent purchaser or encumbrancer and is bound by all proceedings taken after the filing of the petition to the same extent as if he were made a party to the action or special proceeding. The filing of the petition is of no avail unless it is followed by the first publication of the rule or by the personal service thereof on a respondent within sixty days after the filing.

HISTORY: 1962 Code Section 45‑69; 1952 Code Section 45‑69; 1942 Code Section 8707‑1; 1933 (38) 467; 1988 Act No. 494, Section 8(8).

CROSS REFERENCES

Notice of lis pendens, see Sections 15‑11‑10 et seq.

Library References

Lis Pendens 3(1).

Mortgages 311.

Westlaw Topic Nos. 242, 266.

C.J.S. Lis Pendens Sections 11, 41.

C.J.S. Mortgages Sections 478, 482.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Lis Pendens Section 3, Defined.

S.C. Jur. Lis Pendens Section 15, Actions to Satisfy Mortgages.

S.C. Jur. Lis Pendens Section 32, Cancellation by Operation of Law.

S.C. Jur. Mortgages Section 153, Order of Court.

**SECTION 29‑3‑410.** Issuance of rule to show cause; service of rule.

 Upon the filing of such petition, the court or judge thereof shall grant and issue a rule to show cause returnable on a day to be fixed by the court or judge. The rule and petition shall be served upon the mortgagee or his legal representatives or assignees and pledgees of record and every other party named as respondent in the petition.

HISTORY: 1962 Code Section 45‑70; 1952 Code Section 45‑70; 1942 Code Section 8707‑1; 1933 (38) 467.

Library References

Mortgages 311.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 478, 482.

**SECTION 29‑3‑420.** Service by publication on certain parties.

 If (a) the mortgagee or any of his pledgees or assignees or any other person having any right, title or interest in or lien upon the mortgage shall be dead at or before the time of the filing of the petition and no legal representatives have been appointed and qualified for such person, (b) any of such persons cannot be found within this State or (c) the mortgagee, assignee, pledgee or interested person is a domestic or foreign corporation which has been dissolved or has ceased to do business in this State and no officer or agent authorized to accept service of the petition and rule can be found in this State, the court or judge, upon proof of such facts by affidavit of the petitioner, shall grant an order for the publication of the rule to show cause, such publication to be made once a week for three consecutive weeks in some newspaper published in the county in which the mortgaged property or some part thereof is situate or, if there is no newspaper in such county, by posting a copy of the petition and rule to show cause upon the courthouse door of the county for a period of three weeks. Such constructive service shall be complete upon the expiration of twenty‑one days from the time of the first publication or posting of the petition and rule to show cause.

HISTORY: 1962 Code Section 45‑71; 1952 Code Section 45‑71; 1942 Code Section 8707‑1; 1933 (38) 467.

CROSS REFERENCES

Service by publication generally, see Sections 15‑9‑710 et seq.

Library References

Mortgages 311.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 478, 482.

**SECTION 29‑3‑430.** Order to cancel mortgage or release lien upon failure to show sufficient cause.

 If the parties so served with the petition and rule shall not attend to show cause or, attending, shall fail to show sufficient cause and the court or judge shall be satisfied that the debt or obligation secured by the mortgage has been fully paid, satisfied, discharged, released or extinguished or that the lien of the mortgage has been released, discharged or extinguished, the court or judge shall thereupon, by an appropriate order, direct the proper officer to satisfy and cancel the mortgage or the record thereof or to release the lien of the mortgage upon the record thereof, as the case may be.

HISTORY: 1962 Code Section 45‑72; 1952 Code Section 45‑72; 1942 Code Section 8707‑1; 1933 (38) 467.

Library References

Mortgages 311.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 478, 482.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 153, Order of Court.

**SECTION 29‑3‑440.** Persons on whom satisfaction by order of court is binding.

 Such satisfaction and cancellation of the mortgage or release of the lien thereof shall be effectual and binding upon the parties so served with the petition and rule and upon every assignee or pledgee of every parol or written assignment, pledge or hypothecation of such mortgage not named in and served with the petition and rule unless such pledge, hypothecation or assignment is duly recorded in the proper office at or before the time of the filing of the petition or the petitioner has actual notice or knowledge thereof.

HISTORY: 1962 Code Section 45‑73; 1952 Code Section 45‑73; 1942 Code Section 8707‑1; 1933 (38) 467.

Library References

Mortgages 311, 315(1).

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 478 to 482, 485.

**SECTION 29‑3‑450.** Cumulative nature of foregoing sections.

 Sections 29‑3‑390 to 29‑3‑440 shall not be taken or deemed to repeal any other laws relating to the subject matter thereof but shall be deemed and construed to be cumulative of other remedies.

HISTORY: 1962 Code Section 45‑74; 1952 Code Section 45‑74; 1942 Code Section 8707‑1; 1933 (38) 467.

Library References

Mortgages 311.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 478, 482.

**SECTION 29‑3‑460.** Abatement of notice of lis pendens.

 The court in which the action or special proceeding was commenced may, in its discretion and at any time after the action or special proceeding shall be settled, discontinued or abated as provided in Sections 15‑5‑180 and 15‑5‑190, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized by Section 29‑3‑400 to be cancelled of record by the clerk of the court of common pleas of any county in whose office it may have been indexed and such cancellation shall be made by an endorsement to that effect on the margin of the index of the record, which shall refer to the order for cancellation.

HISTORY: 1962 Code Section 45‑75; 1952 Code Section 45‑75; 1942 Code Section 8707‑1; 1933 (38) 467.

Editor’s Note

Sections 15‑5‑180 and 15‑5‑190, which provided for abatement and continuance upon the death or disability of a party, were repealed by 1985 Act No. 100, $ 2, effective July 1, 1985. Provisions comparable to former section 15‑5‑180 may be found in South Carolina Civil Procedure Rule 25.

CROSS REFERENCES

Notice of lis pendens, see Sections 15‑11‑10 et seq.

Library References

Lis Pendens 20.

Mortgages 311.

Westlaw Topic Nos. 242, 266.

C.J.S. Lis Pendens Sections 14, 24 to 30, 42.

C.J.S. Mortgages Sections 478, 482.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Lis Pendens Section 15, Actions to Satisfy Mortgages.

S.C. Jur. Lis Pendens Section 31, Cancellation by Statute.

S.C. Jur. Mortgages Section 153, Order of Court.

**SECTION 29‑3‑470.** Release of portion of mortgaged premises.

 Nothing provided in this title prevents the release of a portion of any mortgaged interest in real property from the lien of the mortgage by any instrument in writing duly executed in the presence of one or more witnesses and duly probated, the release to be executed by the owner or holder of the lien or his duly authorized representative as will appear by the record of the original instrument or of any assignment thereof. If the release is written upon or attached to the original mortgage no probate thereof is required.

HISTORY: 1962 Code Section 45‑76; 1952 Code Section 45‑76; 1942 Code Section 8702; 1932 Code Section 8702; 1924 (33) 929; 1925 (34) 83; 1930 (36) 1283; 1940 (41) 1844; 1988 Act No. 494, Section 8(9).

Library References

Mortgages 310, 315(3).

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 479, 485, 488.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Lis Pendens Section 15, Actions to Satisfy Mortgages.

S.C. Jur. Mortgages Section 149, Release, Satisfaction, and Discharge.

S.C. Jur. Mortgages Section 160, Partial Release.

ARTICLE 7

Foreclosure

**SECTION 29‑3‑610.** Personal representative of deceased mortgagor as party.

 It shall not be necessary to make the personal representative of a deceased mortgagor a party to any foreclosure proceeding and no sale heretofore made under foreclosure proceedings to which the personal representative of a deceased mortgagor was not a party shall be invalid by reason of the absence of such personal representative.

HISTORY: 1962 Code Section 45‑81; 1952 Code Section 45‑81; 1942 Code Sections 487, 8707; 1932 Code Sections 487, 8708, 8712; Civ. C. ‘22 Sections 5529, 5232; Civ. C. ‘12 Sections 3465, 3468; Civ. C. ‘02 Sections 2380, 2382; Civ. P. ‘22 Section 430; Civ. P. ‘12 Section 218; Civ. P. ‘02 Section 188; 1870 (14) 190; 1894 (21) 816; 1900 (23) 349; 1935 (39) 406.

CROSS REFERENCES

Parties, generally, see Sections 15‑5‑45 et seq.

Uniform Standards Code for Manufactured Housing, license expiration, applicant requirements for license, see Section 40‑29‑200.

Library References

Mortgages 427(1).

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 708 to 711, 720, 726.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 27, Collection of Common Expenses.

S.C. Jur. Mortgages Section 108, Defendants.

S.C. Jur. Mortgages Section 154, Foreclosure by Senior Lienholder.

S.C. Jur. Reference Section 6, Nature and Scope of Authority.

S.C. Jur. Reference Section 13, Specific Matters.

LAW REVIEW AND JOURNAL COMMENTARIES

Mortgages—Consideration in a Valid Debt or Obligation—Are Either or Both Necessary to the Validity of a Mortgage? 19 S.C. L. Rev. 798.

NOTES OF DECISIONS

In general 1

1. In general

After 1900 Act No. 196 [1900 (23) 349], an order requiring personal representative of mortgagor made a party defendant was properly vacated. Peeples v Mims (1902) 64 SC 226, 42 SE 155. Glenn v Gerald (1902) 64 SC 236, 42 SE 155.

Additional related cases, see Erskine v Markham (1909) 84 SC 267, 66 SE 286. Jenkins v Atlantic C. L. R. Co. (1909) 84 SC 343, 66 SE 409.

Cited in Greenwood Loan & Guarantee Ass’n v. Williams (S.C. 1905) 71 S.C. 421, 51 S.E. 272.

**SECTION 29‑3‑620.** Mortgagor as party.

 It shall not be necessary to make a mortgagor who has conveyed to another the mortgaged premises a party to any action for foreclosure when no judgment for a deficiency is demanded.

HISTORY: 1962 Code Section 45‑82; 1952 Code Section 45‑82; 1942 Code Sections 487, 8708; 1932 Code Sections 487, 8708, 8712; Civ. C. ‘22 Sections 5229, 5232; Civ. C. ‘12 Sections 3465, 3468; Civ. C. ‘02 Sections 2380, 2382; Civ. P. ‘22 Section 430; Civ. P. ‘12 Section 218; Civ. P. ‘02 Section 188; 1870 (14) 190; 1894 (21) 816; 1900 (23) 349; 1935 (39) 406.

CROSS REFERENCES

Parties generally, see Sections 15‑5‑45 et seq.

Library References

Mortgages 427(1).

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 708 to 711, 720, 726.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 108, Defendants.

NOTES OF DECISIONS

In general 1

1. In general

Mortgagor having conveyed is not a necessary party. Greenwood Loan & Guarantee Ass’n v. Williams (S.C. 1905) 71 S.C. 421, 51 S.E. 272.

**SECTION 29‑3‑625.** Expedited mortgage foreclosures for abandoned property.

 (A) For the purposes of this section, “abandoned property” means real property subject to a mortgage where either:

 (1) the mortgaged property is not occupied and at least two of the following conditions exist:

 (a) windows or entrances to the property are boarded up or closed off or multiple window panes are damaged, broken, or unrepaired;

 (b) doors to the property are smashed through, broken off, unhinged, or continuously unlocked;

 (c) hazardous, noxious, or unhealthy substances or materials have accumulated on the property;

 (d) gas, electric, or water utility services have been terminated by the utility for at least thirty days due to failure to pay by the property owner;

 (e) a risk to the health, safety, or welfare of the public exists due to acts of vandalism, loitering, criminal conduct, or the physical destruction or deterioration of the property;

 (f) an uncorrected violation of a building, housing, or similar code during the preceding year that the property owner has received notice to correct and has failed to do so;

 (g) an order by governmental authorities declaring the property to be unfit for occupancy and to remain vacant and unoccupied;

 (h) a written statement issued by any mortgagor expressing the clear intent of all mortgagors to abandon the property;

 (i) written statements of neighbors, delivery persons, or governmental employees indicating that the property is abandoned; or

 (j) any other indicia of abandonment; or

 (2) the mortgaged property is vacant, unimproved land and is in need of maintenance, repair, or securing;

 (3) a showing under items (1) or (2) of this section must be proven by clear and convincing evidence.

 (B) For the purposes of this section, real property must not be considered “abandoned” if, on the property, there is:

 (1) an unoccupied building which is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion, and the building is in compliance with all applicable ordinances, codes, regulations, and statutes;

 (2) a building occupied on a seasonal basis, but otherwise secure;

 (3) a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute; or

 (4) a building owned by a property owner who is deceased and the heirs can be identified. The mortgage holder must submit proof that efforts were made to identify and contact heirs.

 (C) A mortgagee or successor in interest to a mortgagee may move the court for an expedited judgment of foreclosure and sale of real property that is considered “abandoned” pursuant to this section. The motion must be a motion to expedite foreclosure and sale, which:

 (1) must be supported by affidavit and must set forth the facts pursuant to subsection (A) demonstrating that the mortgaged property is abandoned; and

 (2) may be filed by the mortgagee at the time the Order of Reference is filed or any time thereafter.

 (D) In addition to any notices required to be served by law or the South Carolina Rules of Civil Procedure, a mortgagee shall, in a motion to proceed pursuant to this section or with any rule to show cause served as original service of process, serve a notice on each defendant that the mortgagee is seeking an entry of a judgment and decree of foreclosure on the date fixed by the court or on the return date of the rule to show cause.

 (E) A motion to expedite foreclosure and sale may be heard by the master‑in‑equity or special referee, or in those counties without a master‑in‑equity, by a circuit judge.

 (F) A motion to expedite a foreclosure action is designated as a priority matter pursuant to the South Carolina Rules of Civil Procedure and should be heard by the court as quickly as possible.

 (G) The court, after a hearing, shall grant the motion to expedite foreclosure and sale and enter a judgment of foreclosure and sale upon a finding by clear and convincing evidence that:

 (1) the mortgaged property is abandoned as defined under subsection (A); and

 (2) the pleadings, documents filed with the court, and testimony supports the entry of a final judgment of foreclosure and sale.

 (H) The court shall not grant the motion to expedite foreclosure and sale or enter a judgment of foreclosure and sale if the court finds that:

 (1) the mortgaged property is not abandoned; or

 (2) the mortgagor or any other defendant has filed an answer, appearance, or other written objection that is not withdrawn and the defenses or objections asserted provide cause to preclude the entry of a judgment of foreclosure and sale.

 (I) If a motion to expedite foreclosure and sale is denied, the court may direct that the foreclosure action continue pursuant to standard procedure under South Carolina law for mortgage foreclosure actions for properties that are not abandoned.

 (J) Nothing in this section may be construed to supersede or limit procedures adopted by the South Carolina Supreme Court to resolve residential mortgage foreclosure actions.

HISTORY: 2014 Act No. 218 (S.1007), Section 1, eff June 2, 2014.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abandoned and Lost Property Section 9, Real Property.

**SECTION 29‑3‑630.** Debt secured must be established before sale by mortgagee.

 No sale under or by virtue of any mortgage or other instrument in writing intended as security for a debt, conferring a power upon the mortgagee or creditor to sell the mortgaged or pledged property while such power remains of force or has not been revoked by the death of the person executing such mortgage or instrument, shall be valid to pass the title of the land mortgaged unless the debt for which the security is given shall be first established by the judgment of some court of competent jurisdiction or unless the amount of the debt be consented to in writing by the debtor subsequently to the maturity of the debt, such consent in writing to be recorded in the office of the register of deeds or clerk of the court where the mortgage or other instrument in writing given to secure such debt is or ought to be recorded. But if the mortgagor be dead it shall not be necessary in any foreclosure proceeding first to establish the debt by the judgment of some court of competent jurisdiction in order to obtain a decree of foreclosure and sale.

HISTORY: 1962 Code Section 45‑83; 1952 Code Section 45‑83; 1942 Code Sections 487, 8708; 1932 Code Sections 487, 8708, 8712; Civ. C. ‘22 Sections 5229, 5232; Civ. C. ‘12 Sections 3565, 3468; Civ. C. ‘02 Sections 2380, 2382; Civ. P. ‘22 Section 430; Civ. P. ‘12 Section 218; Civ. P. ‘02 Section 188; 1870 (14) 190; 1894 (21) 816; 1900 (23) 349; 1935 (39) 406.

Code Commissioner’s Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to “Register of Mesne Conveyances” to “Register of Deeds” wherever appearing in the 1976 Code of Laws.

Library References

Mortgages 348, 489.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 607, 804 to 805.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 121, Evidence; Sufficiency of Proof.

S.C. Jur. Mortgages Section 122, Scope and Extent of Relief.

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:19, Foreclosure.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina: Deficiency Judgment as an Incident of a Mortgage Foreclosure. 31 S.C. L. Rev. 97.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Simon v Sabb (1899) 56 SC 38, 33 SE 799. Hughes v Slater (1946) 209 SC 168, 39 SE2d 509.

Continuation of insurance provision in title insurance policy provided coverage for damages sustained by assignee of insured mortgagee due to title defect discovered in assignee’s preparation for foreclosure, where policy stated it insured against loss or damage sustained by reason of “title to the collateral being vested other than as stated” in the policy, damages were sustained due to mortgagor’s transfer of portion of property to a third‑party without notice to mortgagee, and coverage continued after foreclosure provided there remained unpaid principal indebtedness. Preservation Capital Consultants, LLC v. First American Title Ins. Co. (S.C. 2013) 406 S.C. 309, 751 S.E.2d 256. Insurance 2613

In an action for a deficiency judgment by a holder of a second mortgage on real estate, the plaintiff properly established the amount of the debt prior to foreclosure, as required by Section 29‑3‑630, since the amount of the debt fixed in the decree of foreclosure was a final adjudication thereof and was binding in the proceeding for the deficiency judgment. Bartles v. Livingston (S.C.App. 1984) 282 S.C. 448, 319 S.E.2d 707.

Where plaintiff alleged amount due in complaint, and special referee and circuit judge both established amount due in report and order, defendants were not surprised by plaintiff’s motion for deficiency judgment so as to make a erroneous grant of the motion. Perpetual Bldg. and Loan Ass’n of Anderson v. Braun (S.C. 1978) 270 S.C. 338, 242 S.E.2d 407.

Where plaintiff, a Tennessee bank, held a deed of trust on property in Tennessee owned by defendant, a resident of South Carolina, and after sale under the deed of trust brought an action for balance due on defendant’s note secured by deed of trust, this section was held not to apply. Fidelity‑Bankers Trust Co. v. Little (S.C. 1935) 178 S.C. 133, 181 S.E. 913.

**SECTION 29‑3‑640.** Time within which mortgagor’s consent to amount of debt is valid to allow sale by mortgagee.

 The consent of the mortgagor to the amount of the debt shall bear date not more than twelve months prior to any sale under any power contained in any such mortgage as referred to in Section 29‑3‑630.

HISTORY: 1962 Code Section 45‑84; 1952 Code Section 45‑84; 1942 Code Section 8711; 1932 Code Section 8711; Civ. C. ‘22 Section 5231; Civ. C. ‘12 Section 3467; Civ. C. ‘02 Section 2381; 1896 (22) 194.

**SECTION 29‑3‑650.** Court may render judgment and order sale at same time.

 The court may also render judgment against the parties liable for the payment of the debt secured by the mortgage and direct at the same time the sale of the mortgaged premises. Such judgment so rendered may be entered and docketed in the clerk’s office in the same manner as other judgments. Upon the sale of the mortgaged premises the officer making the sale under the order of the court shall credit upon the judgment so rendered for the debt the amount paid to the plaintiff from the proceeds of the sale.

HISTORY: 1962 Code Section 45‑85; 1952 Code Section 45‑85; 1942 Code Section 487; 1932 Code Sections 487, 8712; Civ. C. ‘22 Section 5232; Civ. P. ‘22 Section 430; Civ. C. ‘12 Section 3468; Civ. P. ‘12 Section 218; Civ. C. ‘02 Section 2382; Civ. P. ‘02 Section 188; 1870 (14) 190; 1894 (21) 816; 1900 (23) 349; 1935 (39) 406.

Library References

Mortgages 348, 502.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 607, 842.

RESEARCH REFERENCES

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:19, Foreclosure.

NOTES OF DECISIONS

In general 1

1. In general

This section simply allows the court in its discretion to grant the personal judgment at the time of giving the judgment for foreclosure. White v. Douglas (S.C. 1924) 128 S.C. 409, 123 S.E. 259.

This section does not give a discretionary power as to the amount of the personal judgment. White v. Douglas (S.C. 1924) 128 S.C. 409, 123 S.E. 259.

**SECTION 29‑3‑660.** Deficiency judgment.

 In actions to foreclose mortgages the court may adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage and if the mortgage debt be secured by the covenant or obligation of any person other than the mortgagor the plaintiff may make such person a party to the action and the court may adjudge payment of the residue of such debt remaining unsatisfied after a sale of the mortgaged premises against such other person and may enforce such judgment as in other cases.

HISTORY: 1962 Code Section 45‑86; 1952 Code Section 45‑86; 1942 Code Section 487; 1932 Code Sections 487, 8712; Civ. C. ‘22 Section 5232; Civ. P. ‘22 Section 430; Civ. C. ‘12 Section 3468; Civ. P. ‘12 Section 218; Civ. C. ‘02 Section 2382; Civ. P. ‘02 Section 188; 1870 (14) 190; 1894 (21) 816; 1900 (23) 349; 1935 (39) 406.

Library References

Mortgages 375, 556, 559(1).

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 674 to 676, 931 to 933, 937, 939.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 108, Defendants.

S.C. Jur. Mortgages Section 122, Scope and Extent of Relief.

S.C. Jur. Mortgages Section 140, Election or Waiver.

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:12, Deficiency Judgments.

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:19, Foreclosure.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina: Deficiency Judgment as an Incident of a Mortgage Foreclosure. 31 S.C. L. Rev. 97.

NOTES OF DECISIONS

In general 1

Denial of judgment 2.5

Fraudulent conveyances 4

Jury trial 1.5

Motion for deficiency judgment 2

Waiver of deficiency judgment 3

1. In general

In general, if mortgaged premises are sold under a foreclosure decree and fail to bring a sufficient amount to satisfy the debt, the mortgagee is entitled, absent any statutory limitation or waiver on his part, to a personal judgment for the remaining deficiency. American General Financial Services, Inc. v. Brown (S.C. 2008) 376 S.C. 580, 658 S.E.2d 99. Mortgages And Deeds Of Trust 2073

Deficiency judgment is such incident of mortgage foreclosure that it may be supported by general prayer for relief. Perpetual Bldg. and Loan Ass’n of Anderson v. Braun (S.C. 1978) 270 S.C. 338, 242 S.E.2d 407.

Rendition of personal judgment in mortgage foreclosure proceeding is discretionary with court. Perpetual Bldg. and Loan Ass’n of Anderson v. Braun (S.C. 1978) 270 S.C. 338, 242 S.E.2d 407. Mortgages And Deeds Of Trust 2093(1)

Mortgage represents security for obligation, not full payment thereof; it is not implicit in taking of mortgage that creditor is to look only to property for satisfaction of debt. Perpetual Bldg. and Loan Ass’n of Anderson v. Braun (S.C. 1978) 270 S.C. 338, 242 S.E.2d 407. Mortgages And Deeds Of Trust 925; Mortgages And Deeds Of Trust 1624(2)

Quoted in Hughes v. Slater (S.C. 1946) 209 S.C. 168, 39 S.E.2d 509.

Cited in McConnell v. Barnes (S.C. 1927) 142 S.C. 112, 140 S.E. 310, 57 A.L.R. 483.

The rendition of a personal judgment in mortgage foreclosure proceedings is discretionary with the court under this section [Code 1962 Section 45‑86]. Berry v. Caldwell (S.C. 1922) 121 S.C. 418, 114 S.E. 405.

Under this section, an assignee of a mortgage and notes secured thereby may, on the default of the mortgagor, use in one action the mortgagor to foreclose the mortgage and the mortgagee on his guaranty of the payment of the debt. Welborn v. Cobb (S.C. 1912) 92 S.C. 384, 75 S.E. 691. Action 50(5)

Where no judgment for deficiency is sought against personal representative, suit for foreclosure may be brought within a year. Green v. McCarter (S.C. 1902) 64 S.C. 290, 42 S.E. 157.

Judgment for balance due after sale of mortgaged premises, see Wagener v. Swygert (S.C. 1889) 30 S.C. 296, 9 S.E. 107.

1.5. Jury trial

Mortgage guarantor waived his right to a jury trial on his breach of contract counterclaim in mortgagee’s foreclosure action, because the counterclaim was permissive as it did not arise of the same transaction or occurrence as the execution of the guaranty agreements; the transaction or occurrence for the purpose of determining the compulsory nature of the counterclaim was the execution of the guarantee documents, and the breach of contract claim did not affect the execution or enforceability of the guaranty agreements. Carolina First Bank v. BADD, L.L.C. (S.C. 2015) 414 S.C. 289, 778 S.E.2d 106, rehearing granted, rehearing dismissed. Jury 28(5)

Mortgage guarantor waived his right to a jury trial on his civil conspiracy counterclaim in mortgagee’s foreclosure action, because the counterclaim was permissive as it did not arise of the same transaction or occurrence as the execution of the guaranty agreements; the civil conspiracy claim presumed the enforceability of the guaranty agreements because the allegations of civil conspiracy, even if true, would not have rendered the guarantee agreements unenforceable. Carolina First Bank v. BADD, L.L.C. (S.C. 2015) 414 S.C. 289, 778 S.E.2d 106, rehearing granted, rehearing dismissed. Jury 28(5)

In mortgagee’s foreclosure action, guarantor, who was included as a party only for the purpose of collecting a deficiency should one be adjudged, did not have a right to a jury trial. Carolina First Bank v. BADD, L.L.C. (S.C. 2015) 414 S.C. 289, 778 S.E.2d 106, rehearing granted, rehearing dismissed. Jury 14(4)

2. Motion for deficiency judgment

Circuit judge acted within discretion in granting motion for deficiency judgment where it was not specifically demanded in foreclosure complaint, absent express waiver by plaintiff. Perpetual Bldg. and Loan Ass’n of Anderson v. Braun (S.C. 1978) 270 S.C. 338, 242 S.E.2d 407.

Where plaintiff alleged amount due in complaint, and special referee and circuit judge both established amount due in report and order, defendants were not surprised by plaintiff’s motion for deficiency judgment so as to make erroneous a grant of the motion. Perpetual Bldg. and Loan Ass’n of Anderson v. Braun (S.C. 1978) 270 S.C. 338, 242 S.E.2d 407.

A personal judgment for a deficiency on a foreclosure proceeding can be rendered at the time of judgment; it is not necessary to wait until after the sale and a report of the master have been made. White v. Douglas (S.C. 1924) 128 S.C. 409, 123 S.E. 259.

2.5. Denial of judgment

A mortgagee is not denied the full amount due him merely because he elects initially to pursue his remedy by foreclosure; an action for a deficiency judgment as a sequel to foreclosure is taken as a matter of course. American General Financial Services, Inc. v. Brown (S.C. 2008) 376 S.C. 580, 658 S.E.2d 99. Mortgages And Deeds Of Trust 1624(2)

Trial court had no discretion to deny mortgagee deficiency judgment in foreclosure action, since mortgagee did not waive its right to a deficiency, but instead specifically demanded a deficiency, and sale of premises was insufficient to satisfy entire debt; deficiency judgment could be denied only when it was expressly waived. American General Financial Services, Inc. v. Brown (S.C. 2008) 376 S.C. 580, 658 S.E.2d 99. Mortgages And Deeds Of Trust 2074

3. Waiver of deficiency judgment

Language of Section 15‑39‑760 stating that 30‑day requirement will not apply when there is express waiver of right to deficiency judgment indicates legislature’s intention to deny deficiency judgment only when expressly waived. Perpetual Bldg. and Loan Ass’n of Anderson v. Braun (S.C. 1978) 270 S.C. 338, 242 S.E.2d 407.

4. Fraudulent conveyances

A deed from a judgment debtor to his wife, made to prevent a creditor bank from collecting its expected deficiency judgment, will be set aside in a proceeding by the bank after it has secured such a judgment, and a return of nulla bona has been made. Farmers’ Bank v. Bradham (S.C. 1924) 129 S.C. 270, 123 S.E. 835. Fraudulent Conveyances 104(2)

A creditor can sue to set aside for actual fraud a conveyance made by a debtor who is insolvent, without first reducing his demand to judgment, under this section. Miller v. Hughes (S.C. 1890) 33 S.C. 530, 12 S.E. 419. Fraudulent Conveyances 241(2)

The complaint in an action to set aside a judgment is not demurrable because it makes no formal demand for judgment against the debtor for the amount due from him, when facts sufficient to warrant such a judgment are stated. Miller v. Hughes (S.C. 1890) 33 S.C. 530, 12 S.E. 419. Fraudulent Conveyances 265

**SECTION 29‑3‑670.** Deficiency shall not be extinguished on purchase by mortgagee.

 When any sale of land is made under the circumstances under which such a sale is permitted by Section 29‑3‑630 any balance of the mortgage debt over the purchase price of the land at such sale shall not be extinguished by reason of the mortgagee or his assigns becoming the purchaser at such sale, whether the mortgage contained a provision to that effect or not.

HISTORY: 1962 Code Section 45‑87; 1952 Code Section 45‑87; 1942 Code Section 8711; 1932 Code Section 8711; Civ. C. ‘22 Section 5231; Civ. C. ‘12 Section 3467; Civ. C. ‘02 Section 2381; 1896 (22) 194.

Library References

Mortgages 375, 559(3).

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 674 to 676, 933 to 935, 937, 950.

RESEARCH REFERENCES

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:12, Deficiency Judgments.

**SECTION 29‑3‑680.** Application for order of appraisal.

 (A) In any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked, whether he has theretofore appeared in the action or not, may within thirty days after the sale of the mortgaged property apply by verified petition to the clerk of court in which the decree or order of sale was taken for an order of appraisal.

 (B) Except in any real estate foreclosure proceeding relating to a dwelling place, as defined in Section 12‑37‑250, or to a consumer credit transaction, as defined in Section 37‑1‑301(11), a defendant against whom a personal judgment may be taken on a real estate secured transaction may waive the appraisal rights as provided by this section if the debtors, makers, borrowers, and/or guarantors are notified in writing before the transaction that a waiver of appraisal rights will be required and upon signing a statement during the transaction similar to the following:

 “The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.”

 This waiver may be in any document relating to the transaction; however, the required language must be on a page containing the signature of the person making the waiver and the capitalized sentence must be underlined, in capital letters, or disclosed in another prominent manner.

HISTORY: 1962 Code Section 45‑88; 1952 Code Section 45‑88; 1942 Code Section 8712; 1933 (38) 350; 1987 Act No. 27, Section 2; 1996 Act No. 430, Section 5.

Library References

Mortgages 375, 559(4).

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 674 to 676, 933, 939, 950.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Estoppel and Waiver Section 18.1, Contractual Waiver of Statutory Rights.

S.C. Jur. Mortgages Section 39, Waiver of Appraisal Rights.

S.C. Jur. Mortgages Section 141, Appraisal Statutes.

Forms

South Carolina Legal and Business Forms Section 9:53 , Carry Guaranty.

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:12, Deficiency Judgments.

NOTES OF DECISIONS

In general 2

Defendants 3

Time for petitioning for appraisal 4

Validity 1

Waiver 5

What constitutes sale 6

1. Validity

Bank’s right to a deficiency judgment against persons personally liable for the debt remaining after the sale of real property and a mortgage foreclosure action is a property interest protected by the due process clauses. South Carolina Nat. Bank v. Central Carolina Livestock Market, Inc. (S.C. 1986) 289 S.C. 309, 345 S.E.2d 485.

Since Sections 29‑3‑680 et seq., may be applied in a manner consistent with the due process clauses of both the state and federal constitutions, such statutes are not unconstitutional on their face. South Carolina Nat. Bank v. Central Carolina Livestock Market, Inc. (S.C. 1986) 289 S.C. 309, 345 S.E.2d 485.

2. In general

A person who is personally liable for the debt remaining after the sale of property in a mortgage foreclosure action may petition the court for appraisal under Section 29‑3‑680. Standard Federal Sav. Bank v. H & W Builder (S.C. 1994) 323 S.C. 24, 448 S.E.2d 558, rehearing denied. Mortgages And Deeds Of Trust 1931

The legislature of this State cannot enact laws governing the sale of lands in other states, and this section cannot control land in another state. Fidelity‑Bankers Trust Co. v. Little (S.C. 1935) 178 S.C. 133, 181 S.E. 913.

3. Defendants

Third party defendants in a foreclosure action were “defendants” within the meaning of Section 29‑3‑680, allowing them to make a request for the appraisal of the property after the sale, where the relevant pleading, a cross complaint, sought a judgment of foreclosure for the amount found due and owing the cross claimant, and also sought a deficiency judgment against the third party defendants. Standard Federal Sav. Bank v. H & W Builder (S.C. 1994) 323 S.C. 24, 448 S.E.2d 558, rehearing denied.

The trial judge incorrectly denied the guarantors’ request for an appraisal of foreclosed property under Section 29‑3‑680 on the ground that the guarantors’ were not mortgagors; whether a party is a defendant in a real estate foreclosure proceeding is the determining factor when applying the appraisal statute, not whether the party is a mortgagor. Standard Federal Sav. Bank v. H & W Builder (S.C. 1994) 323 S.C. 24, 448 S.E.2d 558, rehearing denied.

A guarantor of a note which was secured by a mortgage could not avail himself of defenses under the Appraisal Statute (Section 29‑3‑680) since its application is limited to real estate foreclosure actions. Citizens and Southern Nat. Bank of South Carolina v. Lanford (S.C. 1994) 313 S.C. 540, 443 S.E.2d 549, rehearing denied.

The guarantors on a loan for a house and several lots, who had purchased the properties at their foreclosure sale for an amount below their appraised value, were entitled to the application of Section 29‑3‑680 where the holder of the mortgage had sought judgment against them for any deficiency remaining after the sale of the mortgaged property, since by its own terms the statute is applicable to “a defendant” in a real estate foreclosure proceeding; boilerplate language in the mortgage which attempted to waive the right to this statute was not binding on the guarantors. Anderson Bros. Bank v. Adams (S.C. 1991) 305 S.C. 25, 406 S.E.2d 173.

4. Time for petitioning for appraisal

Mortgagees failed to timely file a petition for order of appraisal regarding property foreclosed upon where the petition was filed more than 2 years after bids on the property were in and the applicable statute of limitations had not been tolled by the mortgagees appeal of the master’s issuance of a deficiency judgment. South Carolina Nat. Bank v. Devine Blossom (S.C.App. 1996) 321 S.C. 110, 467 S.E.2d 767, rehearing denied, certiorari denied.

5. Waiver

Debtors’ contractual waiver of statutory appraisal rights (Section 29‑3‑680) in mortgages was invalid as against public policy. SCN Mortg. Corp. v. White (S.C. 1994) 312 S.C. 384, 440 S.E.2d 868. Mortgages And Deeds Of Trust 1931

A mortgagor did not waive his rights to an appraisal in a foreclosure proceeding, despite a provision in his mortgage which expressly waived the benefit of any appraisement laws, where the waiver was hidden in small print at the end of the mortgage. SCN Mortg. Corp. v. White (S.C.App. 1992) 309 S.C. 146, 420 S.E.2d 514, rehearing denied, certiorari granted in part, affirmed 312 S.C. 384, 440 S.E.2d 868.

6. What constitutes sale

The word “sale” in Section 29‑3‑680, which provides that a petition for an order of appraisal may be filed within 30 days after the sale of the mortgaged property, refers to the judicial sale at public auction plus the 30‑day period for possible additional bids. This is a reasonable and practical construction consistent with the purpose and policy of the statute, and a reading of Rule 71(b), SCRCP, provides further support for this conclusion. Thus, the date of “sale,” as contemplated by Section 29‑3‑680, was the date when the master received all possible bids and knew all information necessary to make a final report. First South Sav. Bank, Inc. v. Gold Coast Associates (S.C.App. 1990) 301 S.C. 158, 390 S.E.2d 486.

**SECTION 29‑3‑690.** Extension of time for filing for appraisal.

 The time provided by Section 29‑3‑680 for filing the petition required thereunder shall not be enlarged or extended except by a written consent of the judgment creditor.

HISTORY: 1962 Code Section 45‑89; 1952 Code Section 45‑89; 1942 Code Section 8712; 1933 (38) 350.

Library References

Mortgages 375, 505, 559(4).

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 674 to 676, 844, 933, 939, 950.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 141, Appraisal Statutes.

NOTES OF DECISIONS

In general 1

1. In general

Since Sections 29‑3‑680 et seq., may be applied in a manner consistent with the due process clauses of both the state and federal constitutions, such statutes are not unconstitutional on their face. South Carolina Nat. Bank v. Central Carolina Livestock Market, Inc. (S.C. 1986) 289 S.C. 309, 345 S.E.2d 485.

**SECTION 29‑3‑700.** Order for appraisal.

 Upon the filing of such petition and deposit with the clerk of a sufficient sum to pay the costs of the subsequent proceedings he shall issue an order that the property be appraised at its true value as of the date of sale by three disinterested individuals who must be state‑certified general real estate appraisers as defined in Section 40‑60‑20(20), state‑certified residential real estate appraisers as defined by Section 40‑60‑20(21), or state‑licensed real estate appraisers as defined by Section 40‑60‑20(22), who shall not be parties to the action or connected in business with or related by blood or marriage within the sixth degree to any such party.

HISTORY: 1962 Code Section 45‑90; 1952 Code Section 45‑90; 1942 Code Section 8712; 1933 (38) 350; 1996 Act No. 430, Section 6.

Library References

Mortgages 375, 505(1), 559(4).

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 674 to 676, 844, 933, 939, 950.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 141, Appraisal Statutes.

Treatises and Practice Aids

Restatement (3d) of Property (Mortgages) Section 8.4, Foreclosure: Action for a Deficiency.

Restatement (3d) of Property (Mortgages) Section 8.4 TD 5, Foreclosure: Action for a Deficiency.

NOTES OF DECISIONS

In general 2

Validity 1

1. Validity

Since Sections 29‑3‑680 et seq., may be applied in a manner consistent with the due process clauses of both the state and federal constitutions, such statutes are not unconstitutional on their face. South Carolina Nat. Bank v. Central Carolina Livestock Market, Inc. (S.C. 1986) 289 S.C. 309, 345 S.E.2d 485.

Court order confirming the appraisal and extinguishing bank’s sufficiency judgment pursuant to Sections 29‑3‑680 et seq., did not deprive bank of due process, where, upon appeal from the appraisers’ return, the parties were permitted to present depositions in lieu of affidavits, the bank was given the opportunity to fully examine the appraisers and other witnesses, and the parties were also given the opportunity to file briefs in support of their respective positions, thus, affording the bank a meaningful opportunity to be heard. South Carolina Nat. Bank v. Central Carolina Livestock Market, Inc. (S.C. 1986) 289 S.C. 309, 345 S.E.2d 485. Constitutional Law 4417; Mortgages And Deeds Of Trust 705(4)

2. In general

A licensed real estate agent appointed by the court in a mortgage foreclosure action was qualified to be an appraiser, despite his lack of certification as a real estate appraiser, since Section 29‑3‑700 merely requires that an appraiser be a freeholder of the county in which the foreclosed property is located, and it was undisputed that the agent was a freeholder of such property (decided prior to 1996 amendment deleting reference to freeholders in county). South Carolina Nat. Bank v. S & L Inv. Partnership (S.C.App. 1992) 308 S.C. 511, 419 S.E.2d 243, rehearing denied, certiorari denied.

Appraisers are not “disinterested freeholders” where debtor designates one appraiser, where second appraiser is director of one of parties to foreclosure proceedings and where third appraiser’s daughter‑in‑law is officer of foreclosing bank. Bankers Trust of South Carolina v. Bruce (S.C. 1980) 275 S.C. 35, 267 S.E.2d 424.

**SECTION 29‑3‑710.** Appointment of appraisers.

 In his petition the petitioner shall designate one appraiser and within ten days after service of a copy of the order upon the judgment creditor or his attorney of record he shall designate to the clerk another appraiser, whereupon the court having jurisdiction of the action or any judge thereof shall appoint a third, and the said court or judge shall make the appointment herein provided for the judgment creditor if he does not avail himself of his right within the time above prescribed.

HISTORY: 1962 Code Section 45‑91; 1952 Code Section 45‑91; 1942 Code Section 8712; 1933 (38) 350.

Library References

Mortgages 505(3).

Westlaw Topic No. 266.

C.J.S. Mortgages Section 844.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 141, Appraisal Statutes.

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:12, Deficiency Judgments.

NOTES OF DECISIONS

In general 1

1. In general

Since Sections 29‑3‑680 et seq., may be applied in a manner consistent with the due process clauses of both the state and federal constitutions, such statutes are not unconstitutional on their face. South Carolina Nat. Bank v. Central Carolina Livestock Market, Inc. (S.C. 1986) 289 S.C. 309, 345 S.E.2d 485.

**SECTION 29‑3‑720.** Appraisal of the mortgaged property.

 The board of appraisers as so constituted shall proceed to view and value the mortgaged property and all or a majority thereof shall make a sworn return within thirty days from their appointment of the true value of the property as of the date of sale, taking into consideration sale value, cost and replacement value of improvements, income production and all other proper elements which, in their discretion, enter into the determination of true value.

HISTORY: 1962 Code Section 45‑92; 1952 Code Section 45‑92; 1942 Code Section 8712; 1933 (38) 350.

Library References

Mortgages 505(4).

Westlaw Topic No. 266.

C.J.S. Mortgages Section 844.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 141, Appraisal Statutes.

NOTES OF DECISIONS

In general 2

Interested party 3

Validity 1

1. Validity

Court order confirming the appraisal and extinguishing bank’s sufficiency judgment pursuant to Sections 29‑3‑680 et seq., did not deprive bank of due process, where, upon appeal from the appraisers’ return, the parties were permitted to present depositions in lieu of affidavits, the bank was given the opportunity to fully examine the appraisers and other witnesses, and the parties were also given the opportunity to file briefs in support of their respective positions, thus, affording the bank a meaningful opportunity to be heard. South Carolina Nat. Bank v. Central Carolina Livestock Market, Inc. (S.C. 1986) 289 S.C. 309, 345 S.E.2d 485. Constitutional Law 4417; Mortgages And Deeds Of Trust 705(4)

Since Sections 29‑3‑680 et seq., may be applied in a manner consistent with the due process clauses of both the state and federal constitutions, such statutes are not unconstitutional on their face. South Carolina Nat. Bank v. Central Carolina Livestock Market, Inc. (S.C. 1986) 289 S.C. 309, 345 S.E.2d 485.

Under the due process clause, it is permissible for the value of land sold in a mortgage foreclosure action to be determined by appraisers without an evidentiary hearing where their appraisal is subject to an appeal at which the parties may offer evidence and be fully heard on the issue of value; the fact that the appellate court is limited to either approval or disapproval of the appraisal does not deprive a party of due process. South Carolina Nat. Bank v. Central Carolina Livestock Market, Inc. (S.C. 1986) 289 S.C. 309, 345 S.E.2d 485. Constitutional Law 4077

2. In general

An appraiser appointed by the court in a mortgage foreclosure action did not violate the appraisal statute by failing to consider all the factors required to be considered in Section 29‑3‑720, despite his statement that he thought the income production factor was the only “relevant factor,” where he did not state that the other factors were not considered, and 3 other appraisers agreed that the income approach was the most reliable indicator of value. South Carolina Nat. Bank v. S & L Inv. Partnership (S.C.App. 1992) 308 S.C. 511, 419 S.E.2d 243, rehearing denied, certiorari denied.

Appraisers act in a quasi‑judicial capacity insofar as their factual determination of the value of the subject property. The only discretion allowed a court is to order a reappraisal in which event the court is authorized to impose such terms, such as the method of appraisal, as it might in its discretion deem equitable. Thus, a trial judge did not have statutory authority or inherent authority to reappraise property; his authority was limited to either (1) confirming the report of the board of appraisers or (2) disapproving the report and ordering a new appraisal upon such terms as he deemed equitable. Peoples Federal Sav. and Loan Ass’n v. Myrtle Beach Retirement Group, Inc. (S.C.App. 1990) 302 S.C. 223, 394 S.E.2d 849.

Where appraisers testified that they considered numerous factors, including a mineral report, in appraising property, the trial court correctly found that the appraisers took into consideration the elements listed in Section 29‑3‑720. First Citizens Bank and Trust Co. of South Carolina v. Overlook, Inc. (S.C.App. 1985) 286 S.C. 473, 334 S.E.2d 146.

3. Interested party

An appraiser appointed by the court in a mortgage foreclosure action was not an “interested” party by virtue of his alleged attempt to sell an unrelated piece of property to another appraiser during the appraisal meeting, since there was no contention that he was either a party to the foreclosure action, or that he was connected by family or business to a party. South Carolina Nat. Bank v. S & L Inv. Partnership (S.C.App. 1992) 308 S.C. 511, 419 S.E.2d 243, rehearing denied, certiorari denied.

**SECTION 29‑3‑730.** Effect of failure of appraisers to agree.

 If a majority of the board shall not agree and make return within the time above prescribed another shall be likewise appointed of the same qualifications and with the same duties and likewise thereafter new boards shall be appointed until one shall make a return agreed to by a majority.

HISTORY: 1962 Code Section 45‑93; 1952 Code Section 45‑93; 1942 Code Section 8712; 1933 (38) 350.

Library References

Mortgages 505(4).

Westlaw Topic No. 266.

C.J.S. Mortgages Section 844.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 122, Scope and Extent of Relief.

S.C. Jur. Mortgages Section 141, Appraisal Statutes.

NOTES OF DECISIONS

In general 1

1. In general

Since Sections 29‑3‑680 et seq., may be applied in a manner consistent with the due process clauses of both the state and federal constitutions, such statutes are not unconstitutional on their face. South Carolina Nat. Bank v. Central Carolina Livestock Market, Inc. (S.C. 1986) 289 S.C. 309, 345 S.E.2d 485.

**SECTION 29‑3‑740.** Return of appraisers; effect of return on deficiency judgment.

 The return of the appraisers shall be filed and recorded by the clerk as a judgment of the court and be subject to appeal as hereinafter provided. If the value returned after deduction therefrom of the amount of the price at which the property was sold under direction of the court be equal to or exceed the amount of the deficiency remaining upon the judgment after application of the net proceeds of sale the judgment shall be thereupon extinguished and cancelled of record by the clerk and if such returned value, after deduction of the amount of the sale price, be less than the deficiency the latter shall be abated and deemed paid, pro tanto, and be thereafter enforceable for only the remainder, the amount of which will be determined by the clerk and stated in a proper order from which any party may appeal within ten days after notice of filing thereof to the court or any judge thereof in accord with the procedure prescribed in Section 29‑3‑750.

HISTORY: 1962 Code Section 45‑94; 1952 Code Section 45‑94; 1942 Code Section 8712; 1933 (38) 350.

Library References

Mortgages 375, 505(6), 559(4).

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 674 to 676, 844, 933, 939, 950.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 141, Appraisal Statutes.

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:12, Deficiency Judgments.

NOTES OF DECISIONS

In general 2

Validity 1

1. Validity

Under the due process clause, it is permissible for the value of land sold in a mortgage foreclosure action to be determined by appraisers without an evidentiary hearing where their appraisal is subject to an appeal at which the parties may offer evidence and be fully heard on the issue of value; the fact that the appellate court is limited to either approval or disapproval of the appraisal does not deprive a party of due process. South Carolina Nat. Bank v. Central Carolina Livestock Market, Inc. (S.C. 1986) 289 S.C. 309, 345 S.E.2d 485. Constitutional Law 4077

Court order confirming the appraisal and extinguishing bank’s sufficiency judgment pursuant to Sections 29‑3‑680 et seq., did not deprive bank of due process, where, upon appeal from the appraisers’ return, the parties were permitted to present depositions in lieu of affidavits, the bank was given the opportunity to fully examine the appraisers and other witnesses, and the parties were also given the opportunity to file briefs in support of their respective positions, thus, affording the bank a meaningful opportunity to be heard. South Carolina Nat. Bank v. Central Carolina Livestock Market, Inc. (S.C. 1986) 289 S.C. 309, 345 S.E.2d 485. Constitutional Law 4417; Mortgages And Deeds Of Trust 705(4)

Since Sections 29‑3‑680 et seq., may be applied in a manner consistent with the due process clauses of both the state and federal constitutions, such statutes are not unconstitutional on their face. South Carolina Nat. Bank v. Central Carolina Livestock Market, Inc. (S.C. 1986) 289 S.C. 309, 345 S.E.2d 485.

2. In general

Appraisers act in a quasi‑judicial capacity insofar as their factual determination of the value of the subject property. The only discretion allowed a court is to order a reappraisal in which event the court is authorized to impose such terms, such as the method of appraisal, as it might in its discretion deem equitable. Thus, a trial judge did not have statutory authority or inherent authority to reappraise property; his authority was limited to either (1) confirming the report of the board of appraisers or (2) disapproving the report and ordering a new appraisal upon such terms as he deemed equitable. Peoples Federal Sav. and Loan Ass’n v. Myrtle Beach Retirement Group, Inc. (S.C.App. 1990) 302 S.C. 223, 394 S.E.2d 849.

Bank’s right to a deficiency judgment against persons personally liable for the debt remaining after the sale of real property and a mortgage foreclosure action is a property interest protected by the due process clauses. South Carolina Nat. Bank v. Central Carolina Livestock Market, Inc. (S.C. 1986) 289 S.C. 309, 345 S.E.2d 485.

**SECTION 29‑3‑750.** Appeal from return of appraisers.

 The petitioner or the judgment creditor may appeal from the return of the appraisers upon notice stating the ground of such appeal served upon the other party within ten days after notice of the filing of the return, such appeal being to the court having jurisdiction of the action or any judge thereof, who shall hear the appeal without a jury in open court or at chambers upon affidavits or oral testimony as he deems advisable. Such court may confirm the return or order a new appraisal upon such terms as he may deem equitable and an appeal from his order or decree shall lie as in other equity cases.

HISTORY: 1962 Code Section 45‑95; 1952 Code Section 45‑95; 1942 Code Section 8712; 1933 (38) 350.

Library References

Mortgages 375, 505(8), 570.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 674 to 676, 834, 844.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 141, Appraisal Statutes.

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:12, Deficiency Judgments.

NOTES OF DECISIONS

In general 1

1. In general

Since Sections 29‑3‑680 et seq., may be applied in a manner consistent with the due process clauses of both the state and federal constitutions, such statutes are not unconstitutional on their face. South Carolina Nat. Bank v. Central Carolina Livestock Market, Inc. (S.C. 1986) 289 S.C. 309, 345 S.E.2d 485.

Under Section 29‑3‑750, the trial judge is not required to take any testimony. Both the statute and judicial precedents give the trial judge discretion in admitting or excluding evidence. Accordingly, the trial judge did not abuse his discretion in excluding testimony which would have been cumulative. First Citizens Bank and Trust Co. of South Carolina v. Overlook, Inc. (S.C.App. 1985) 286 S.C. 473, 334 S.E.2d 146.

**SECTION 29‑3‑760.** Compensation and costs of appraisers and clerk.

 The appraisers shall be paid two dollars each for their services and the clerk’s costs for making orders, filing and recording shall be as for similar papers and pleadings.

HISTORY: 1962 Code Section 45‑96; 1952 Code Section 45‑96; 1942 Code Section 8712; 1933 (38) 350.

Library References

Mortgages 505(3).

Westlaw Topic No. 266.

C.J.S. Mortgages Section 844.

NOTES OF DECISIONS

In general 1

1. In general

Since Sections 29‑3‑680 et seq., may be applied in a manner consistent with the due process clauses of both the state and federal constitutions, such statutes are not unconstitutional on their face. South Carolina Nat. Bank v. Central Carolina Livestock Market, Inc. (S.C. 1986) 289 S.C. 309, 345 S.E.2d 485.

**SECTION 29‑3‑770.** Application of appraisal provisions to present and future mortgages.

 The provisions of Sections 29‑3‑680 to 29‑3‑760, which are intended to affect the remedy of foreclosure, shall apply to the foreclosure of all real estate mortgages now existing and those hereafter executed but, if held invalid by a court of competent jurisdiction as to the former, they shall nevertheless be fully applicable to the latter; but unless the petition required by Section 29‑3‑680 be filed within the time prescribed, no deficiency judgment shall be affected hereby.

HISTORY: 1962 Code Section 45‑96.1; 1952 Code Section 45‑96.1; 1942 Code Section 8712; 1933 (38) 350.

Library References

Mortgages 330, 381.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 492, 577, 691.

RESEARCH REFERENCES

Forms

South Carolina Legal and Business Forms Section 9:53 , Carry Guaranty.

NOTES OF DECISIONS

In general 1

1. In general

Since Sections 29‑3‑680 et seq., may be applied in a manner consistent with the due process clauses of both the state and federal constitutions, such statutes are not unconstitutional on their face. South Carolina Nat. Bank v. Central Carolina Livestock Market, Inc. (S.C. 1986) 289 S.C. 309, 345 S.E.2d 485.

This section evidences fact that legislature did not intend to extend appraisal provisions beyond circumstances regarding deficiency judgments sought in foreclosure proceedings; provisions of Sections 29‑3‑680 through 29‑3‑760 are waived by failure to file a timely petition, and it is hence illogical to conclude that these provisions create public policy that would bar waiver by guarantors of any right to require that creditor first resort to mortgage before bringing action on guaranty agreement. Tri‑South Mortg. Investors v. Fountain (S.C. 1976) 266 S.C. 141, 221 S.E.2d 861.

**SECTION 29‑3‑780.** Entry of release of mortgage on land sold in foreclosure sale.

 Upon confirmation of the circuit court of the report of the master or the other officer making a sale of lands pursuant to decree of foreclosure, the officer of the court making the sale shall cause to be recorded in the office where the foreclosed mortgage is recorded a release, cancellation, and satisfaction of the lien in the form prescribed in Section 29‑3‑790. However, nothing in this section may be construed to satisfy any unpaid portion of the debt secured by the mortgage.

HISTORY: 1962 Code Section 45‑97; 1952 Code Section 45‑97; 1942 Code Section 3620; 1932 Code Section 3620; Civ. C. ‘22 Section 2164; Civ. C. ‘12 Section 1340; Civ. C. ‘02 Section 942; 1900 (23) 347; 1926 (34) 1013; 1929 (36) 17; 1990 Act No. 460, Section 1.

Library References

Mortgages 309.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 451, 465, 477 to 478.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 37, Attorney’s Fee Clauses.

Attorney General’s Opinions

A release of mortgage through foreclosure which has been executed by an officer of the court may be recorded without the requirement of two witnesses. 1994 Op. Atty Gen, No. 94‑8, p. 26.

NOTES OF DECISIONS

Assignment 2

Attorney fees 1

1. Attorney fees

Foreclosure sale on mortgagor’s home did not extinguish mortgagee’s right to attorney fees, in mortgagor’s action challenging mortgagee’s application of property insurance proceeds, under mortgage agreement providing that attorney fees incurred by mortgagee in protecting its rights would be additional debt secured by the mortgage, although the mortgagee’s lien against the property was released by foreclosure sale. Blanding v. Long Beach Mortg. Co. (S.C.App. 2008) 379 S.C. 206, 665 S.E.2d 608, rehearing denied, certiorari granted, opinion vacated, appeal dismissed 390 S.C. 439, 702 S.E.2d 558. Mortgages And Deeds Of Trust 2131(3)

2. Assignment

Extinguishment of second mortgagee’s lien on real property by virtue of foreclosure sale on first mortgage did not extinguish mortgagee’s interest in surplus funds from sale, and therefore, assignment of second mortgage after foreclosure sale did not preclude assignee from claiming surplus funds from sale. BAC Home Loan Servicing, L.P. v. Kinder (S.C. 2012) 398 S.C. 619, 731 S.E.2d 547, rehearing denied. Mortgages And Deeds Of Trust 2047(3); Mortgages And Deeds Of Trust 2108

**SECTION 29‑3‑790.** Form of release of lien.

 The release, cancellation, and satisfaction of lien required under Section 29‑3‑780 must be made in writing and signed by the officer and must be in the following form:

|  |  |  |
| --- | --- | --- |
|  |  |  |
|   | “Lien of mortgage recorded in | , |
|   |   | (Mortgage Book and Page) |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
|   |   |   | is released, canceled, and satisfied by sale |
|   | (Office) |   |   |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |
|   | under foreclosure the \_\_\_\_\_ day of | , |   | , |   |
|   |   | (Month) |   | (Year) |   |
|   | See Judgment Roll No. \_\_\_\_\_\_.” |   |   |   |   |

HISTORY: 1962 Code Section 45‑98; 1952 Code Section 45‑98; 1942 Code Section 3621; 1932 Code Section 3621; Civ. C. ‘22 Section 2165; Civ. C. ‘12 Section 1341; Civ. C. ‘02 Section 943; 1926 (34) 1013; 1929 (36) 17; 1990 Act No. 460, Section 2.

Library References

Mortgages 309(3).

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 451, 465, 477 to 478.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 27, Collection of Common Expenses.

S.C. Jur. Mortgages Section 154, Foreclosure by Senior Lienholder.

S.C. Jur. Reference Section 6, Nature and Scope of Authority.

S.C. Jur. Reference Section 13, Specific Matters.

Attorney General’s Opinions

A release of mortgage through foreclosure which has been executed by an officer of the court may be recorded without the requirement of two witnesses. 1994 Op. Atty Gen, No. 94‑8, p. 26.

**SECTION 29‑3‑800.** Foreclosure of liens; boundary clarification.

 (A) For the counties of this State bordering North Carolina, Oconee, Pickens, Greenville, Spartanburg, Cherokee, York, Lancaster, Chesterfield, Marlboro, Dillon, and Horry, hereinafter referred to as the “affected counties”, the following provisions apply to the foreclosure of liens encumbering affected lands, as further defined and set forth in Section 30‑5‑270.

 (B)(1) In the event a real estate foreclosure proceeding is instituted pursuant to Title 29, Chapter 3 to recover the payment of money secured by mortgages and other liens purporting to encumber property being identified as affected lands, the purported mortgagee, through its attorney of record, shall file with the court a copy of the recorded Notice of Boundary Clarification, along with the attorney’s certification that title to the subject real property has been searched in the affected counties and the affected jurisdiction, as further defined and set forth in Section 30‑5‑270(B)(2) and (3) respectively, and that all parties having an interest in the subject real property pursuant to the muniments of title, as further defined and set forth in Section 30‑5‑270(B)(9), have been served with notice of the proceeding pursuant to the applicable procedure below. All proceedings in the foreclosure action must be stayed until the attorney’s certification is filed with the court.

 (2) In all mortgage foreclosure actions pending on the effective date of the boundary clarification legislation, as further defined and set forth in Section 30‑5‑270(B)(6), before any merits hearing in the case or if an order of foreclosure has been entered before any foreclosure sale, the mortgagee shall, through its attorney of record, serve a copy of the Notice of Boundary Clarification and filed pleadings upon any party identified on the Notice of Boundary Clarification or known to have an interest in the subject affected lands, not already a party to the action, by mailing the notice via certified mail or overnight delivery to the property addresses of the subject affected lands and to all known addresses of the parties; provided, that the notice also shall state that the party has thirty days from the date of mailing of the Notice of Boundary Clarification to file and serve an answer or other response to the mortgagee’s summons and complaint.

 (3) In all mortgage foreclosure actions filed after the effective date of the boundary clarification legislation, the mortgagee, through its attorney of record, shall serve along with the summons and complaint a copy of the recorded Notice of Boundary Clarification upon the mortgagor and all parties identified on the Notice of Boundary Clarification or known to have an interest in the subject affected lands.

 (C) If within thirty days after having been served with Notice of Boundary Clarification as set forth in subsection (B)(1), any party served has failed, refused, or voluntarily elected not to file a response in the foreclosure proceeding, the mortgagee, through its attorney, shall certify that fact to the court, and the foreclosure action may proceed with the parties being bound as any other party in the action by the judgment and order of the court having jurisdiction over the foreclosure action; provided, however, that all parties shall receive actual notice of any hearings and sales in the foreclosure.

 (D) The court having jurisdiction over the foreclosure action shall hear and determine any dispute concerning any party’s right, title, or interest in the subject affected lands.

HISTORY: 2016 Act No. 270 (S.667), Section 16, eff January 1, 2017.