CHAPTER 7

Recordation Essential to Validity

**SECTION 30‑7‑10.** Validity of conveyances, liens, and other transactions as to subsequent purchasers and creditors.

All deeds of conveyance of lands, tenements, or hereditaments, either in fee simple or for life, all deeds of trust or instruments in writing conveying estate, creating a trust in regard to the property, or charging or encumbering it, all mortgages or instruments in writing in the nature of a mortgage of any real property, all marriage settlements, or instruments in the nature of a settlement of a marriage, all leases or contracts in writing made between landlord and tenant for a longer period than twelve months, all statutory liens on buildings and lands for materials or labor furnished on them, all statutory liens on ships and vessels, all certificates of renunciation of dower, all contracts for the purchase and sale of real property, all assignments, satisfactions, releases, and contracts in the nature of subordinations, waivers, and extensions of landlords’ liens, laborers’ liens, sharecroppers’ liens, or other liens on real property created by law or by agreement of the parties and generally all instruments in writing conveying an interest in real estate required by law to be recorded in the office of the register of deeds or clerk of court in those counties where the office of the register of deeds has been abolished or in the office of the Secretary of State delivered or executed after July 31, 1934, except as otherwise provided by statute, are valid so as to affect the rights of subsequent creditors (whether lien creditors or simple contract creditors), or purchasers for valuable consideration without notice, only from the day and hour when they are recorded in the office of the register of deeds or clerk of court of the county in which the real property affected is situated. In the case of a subsequent purchaser of real estate, or in the case of a subsequent lien creditor on real estate for valuable consideration without notice, the instrument evidencing the subsequent conveyance or subsequent lien must be filed for record in order for its holder to claim under this section as a subsequent creditor or purchaser for value without notice, and the priority is determined by the time of filing for record.

HISTORY: 1962 Code Section 60‑101; 1952 Code Section 60‑101; 1942 Code Section 8875; 1932 Code Section 8875; Civ. C. ‘22 Section 5312; Civ. C. ‘12 Section 3542; Civ. C. ‘02 Section 2456; G. S. 1776; R. S. 1968; 1879 (16) 92; 1898 (22) 746; 1909 (26) 190; 1914 (28) 482; 1925 (34) 85; 1927 (35) 72; 1934 (38) 1521; 1936 (39) 1387; 1958 (50) 1958; 1960 (51) 1730; 1988 Act No. 494, Section 8(11).

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.

CROSS REFERENCES

Filing of change of corporate name when real property owned, see Section 33‑4‑104.

Secured transactions, effect of the Commercial Code on this section, see Sections 36‑9‑101 et seq.

Validity of security interests in vehicles, see Section 56‑19‑620.

Library References

Mortgages 151, 162.

Records 19.

Vendor and Purchaser 213, 231(4), 233.

Westlaw Topic Nos. 266, 326, 400.

C.J.S. Executions Section 142.

C.J.S. Executors and Administrators Section 364.

C.J.S. Garnishment Sections 202 to 203.

C.J.S. Judgments Sections 584, 587.

C.J.S. Mechanics’ Liens Sections 225, 234 to 236.

C.J.S. Mortgages Sections 204 to 214, 226 to 232.

C.J.S. Records Section 30.

C.J.S. Vendor and Purchaser Sections 474 to 476, 486 to 487, 491, 496, 499, 503, 505.

RESEARCH REFERENCES

Encyclopedias

112 Am. Jur. Proof of Facts 3d 419, Establishing Priority Under Race Notice Recording Statutes.

S.C. Jur. Assignments Section 37, Recording of an Assignment.

S.C. Jur. Covenants Section 5, Methods of Creating and Requirements of Recording.

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

S.C. Jur. Mechanics’ Liens Section 22, Time Lien Attaches.

S.C. Jur. Mortgages Section 94, Record Notice.

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

S.C. Jur. Shipping Law Section 53, Subsequent Purchasers and Creditors.

Forms

Am. Jur. Pl. & Pr. Forms Vendor and Purchaser Section 1 , Introductory Comments.

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

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

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

South Carolina Legal and Business Forms Section 12:1 , Legal Principles.

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:5, Assignment of Mortgage or Deed of Trust.

Restatement (2d) of Property, Don. Trans. Section 32.3, Document of Transfer Relating to Land.

LAW REVIEW AND JOURNAL COMMENTARIES

The Recording of Land Titles in South Carolina (Herein of Bona Fide Purchase of Land): A Title Examiner’s Guide, 10 SC LQ 346 (1958).

Attorney General’s Opinions

Discussion of the recording requirements the Office of the Register of Deeds for cancellations and terminations of a bond for title, land contract, or other miscellaneous agreement and whether the seller involved in such an agreement can unilaterally cancel the contract after the purchaser’s default, pursuant to the contract’s terms. S.C. Op.Atty.Gen. (July 2, 2014) 2014 WL 3414954.

Registers of Mesne Conveyances and Clerks of Court are not required to accept partial assignments of mortgages for recording; however, because of the absence of express direction from the Legislature on this question, legislative clarification is recommended. 1992 Op. Atty Gen No. 92‑26.

NOTES OF DECISIONS

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1. In general

History of amendments to section, see Carroll v Cash Mills (1923) 125 SC 332, 118 SE 290. Firestone Tire & Rubber Co. v Cross (1927, CA4 SC) 17 F2d 417.

Quoted in Little v Mangum (1927, CA4 SC) 17 F2d 44. Re Colonial Distributing Co. (1968, DC SC) 293 F Supp 1235, app dismd (CA4) 418 F2d 246. Righton v Heirs of Righton (1817) 8 SCL 130. Harrison v Hollis (1820) 11 SCL 578. Armour & Co. v Ross (1907) 78 SC 294, 58 SE 941, reh dismd 78 SC 302, 58 SE 1135. Waring v Miller Batting & Manuf’g Co. (1892) 36 SC 310, 15 SE 132. Armour & Co. v Ross (1906) 75 SC 201, 55 SE 315. Baum v Trantham (1895) 45 SC 291, 23 SE 54. Liddell Co. v Cork (1922) 120 SC 481, 113 SE 327, 23 ALR 800. Haverty Furniture Co. v Worthy (1962) 241 SC 369, 128 SE2d 707.

Applied in Re Thomas (1891 DC SC) 45 F 784, affd (CA4 SC) 55 F 961. Re Tansill (1922, DC SC) 17 F2d 413. First Presbyterian Church v York Depository (1943) 203 SC 410, 27 SE2d 573.

Additional related cases, as to what constitutes “property” and “instrument” under section, see Townsend v Ashepoo Fertilizer Co. (1914, CA4 SC) 212 F 97, cert den 238 US 610, 59 L Ed 1492, 35 S Ct 601. Pridmore v Puffer Mfg. Co. (1908, CA4 SC) 163 F 496. Blackwell v Harrelson (1914) 99 SC 264, 84 SE 233. Murphy v Valk (1889) 30 SC 262, 9 SE 101. Barnwell v Porteus (1835) 11 SC Eq 219. Cooper v Day (1843) 18 SC Eq 26. Steele v Mansell (1847) 40 SCL 437. Godbold v Lambert (1856) 29 SC Eq 155. Bossard v White (1857) 30 SC Eq 483. Ex’Ors of Lott v Degraffenreid (1858) 31 SC Eq 346. Leger v Doyel (1957) 45 SCL 109. Belk v Massey (1858) 45 SCL 614. Youngblood v Keadle (1845) 32 SCL 121. Evans v McLucas (1881) 15 SC 67. McNamee & Co. v Huckabee (1883) 20 SC 190. Levi v Gardner (1898) 53 SC 24, 30 SE 617. Oliver v McWhirter (1919) 112 SC 555, 100 SE 533.

Former wording of this section, see Re Cannon (1903, DC SC) 121 F 582. Simmons v Greer (1909, CA4 SC) 174 F 654. Perkins v Loan & Exchange Bank (1895) 43 SC 39, 20 SE 759. Mowry v Crocker (1890) 33 SC 436, 12 SE 3; Brown v Sartor (1910) 87 SC 116, 69 SE 88. Turpin v Sudduth (1898) 53 SC 295, 31 SE 245, corrected 53 SC 313, 31 SE 306. Avery v Wilson (1896) 47 SC 78, 25 SE 286.

Except as to subsequent purchasers or subsequent creditors, a deed is not affected by not being recorded. Martin v Quattlebam (1825) 14 SCL 205. Martin v Sale (1830) 8 SC Eq 1. Summers v Brice (1892) 36 SC 204, 15 SE 374.

As to recordation in the county where deed was properly probated, see Watts v Whetstone (1908) 79 SC 357, 60 SE 703. Woolfork v Graniteville Mfg. Co. (1885) 22 SC 332.

Spence v. Spence (S.C. 2006) 2005 WL 3719639, [main volume] withdrawn and superseded on denial of rehearing 368 S.C. 106, 628 S.E.2d 869, rehearing denied.

Mortgages not executed in compliance with South Carolina’s recording statute are not valid as to subsequent creditors or purchasers for valuable consideration without notice. In re McGrath (Bkrtcy.D.S.C. 2015) 532 B.R. 253. Mortgages And Deeds Of Trust 740

Under South Carolina recording law, recording is method by which third party without actual notice is alerted to possible transfers of interests in real property, and also provides constructive notice to others of the interest recorded. In re Davis (Bkrtcy.D.S.C. 2013) 490 B.R. 221. Records 19

Both deeds and easements are valid to subsequent purchasers without notice when they are recorded. Frierson v. Watson (S.C.App. 2006) 371 S.C. 60, 636 S.E.2d 872. Easements 21

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

Negligence of seller sufficient to support the plea of estoppel. See Ex parte Dort (S.C. 1961) 238 S.C. 506, 121 S.E.2d 1.

Declarations or statements made by mortgagor as to his place of residence are not conclusive. G. A. C. Finance Corp. v. Citizens and Southern Nat. Bank of S. C. (S.C. 1959) 234 S.C. 205, 107 S.E.2d 315.

The general recording statutes (Code 1962 Sections 101 to 109, and Code 1962 Section 57 of this Title) do not apply to a will. Davis v. Sellers (S.C. 1956) 229 S.C. 81, 91 S.E.2d 885. Wills 420

As between parties thereto, it is not necessary to the validity of any instrument contemplated by this section [Code 1962 Section 60‑101] that it be recorded, since recording becomes material only where there are double conveyances by the same person. Epps v. McCallum Realty Co. (S.C. 1927) 139 S.C. 481, 138 S.E. 297.

Under this section [Code 1962 Section 60‑101], where the land was situated in D. county, but the deed was recorded in F. county, the record in that county was a nullity as against a subsequent mortgagee without notice. Cole v. Ward (S.C. 1908) 79 S.C. 573, 61 S.E. 108.

2. Purpose of section; who is protected

The purpose of this section is to protect subsequent creditors and purchasers for value without notice. Epps v McCallum Realty Co. (1927) 139 SC 481, 138 SE 297. Hayden v Prevatte (1971, DC SC) 327 F Supp 635.

Purpose of statute providing that deeds and easements are valid to subsequent purchasers without notice when they are recorded is to protect a subsequent buyer without notice. Murrells Inlet Corp. v. Ward (S.C.App. 2008) 378 S.C. 225, 662 S.E.2d 452, rehearing denied, certiorari denied. Easements 22; Vendor And Purchaser 231(1)

In foreclosure action in which mortgage was satisfied by mistake, statute setting forth general rule for priority of lien holders did not govern dispute between mortgage lien holder and mechanics lien holders, as mortgage lien holder asserted equitable grounds for relief from strict application of the general rule. Allendale County Bank v. Cadle (S.C.App. 2001) 348 S.C. 367, 559 S.E.2d 342, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 356 S.C. 412, 589 S.E.2d 752. Mortgages And Deeds Of Trust 1330

Fraudulent mortgage satisfaction was properly set aside, notwithstanding subsequent purchaser’s contention that it would be inequitable to do so, given more than five‑year delay by mortgagee in enforcing note and questionable nature of related transactions, inasmuch as subsequent purchaser acquired property after mortgagee filed notice of lis pendens in foreclosure action, and thus had at least constructive notice of litigation involving property. MI Co., Ltd. v. McLean (S.C.App. 1997) 325 S.C. 616, 482 S.E.2d 597, rehearing denied, certiorari denied. Mortgages And Deeds Of Trust 1173

A tax lien is a creature of statute rather than a conveyance evidenced by a written instrument, and is not embraced by Section 30‑7‑10, which relates solely to conveyances. Therefore, Section 30‑7‑10 does not protect a bona fide purchaser against liens or other interests arising out of instruments not entitled to be recorded. Von Elbrecht v. Jacobs (S.C.App. 1985) 286 S.C. 240, 332 S.E.2d 568. Vendor And Purchaser 231(17)

Even though a purchaser of property filed his deed for record two months before a plumbing contractor filed his notice of a mechanic’s lien, the purchaser did not fall within the ambit of Section 30‑7‑10, since nothing on the face of the complaint to foreclose the lien disclosed that the purchase of the property was for value. Masters v. Rodgers Development Group (S.C.App. 1984) 283 S.C. 251, 321 S.E.2d 194.

Judgment lien, founded on that which was antecedent to creation of mortgage obligations, was not within protection of recordation statutes since statute protects subsequent creditor rather than one whose original debt was antecedent in time to mortgage obligation. Atlas Supply Co. v. Davis (S.C. 1979) 273 S.C. 392, 256 S.E.2d 859.

This section is intended to protect against the lien of an unrecorded mortgage person who, without notice of it subsequent to its execution, might reasonably have extended credit to the mortgagor, or purchased the mortgaged property, in reliance upon his apparently unencumbered ownership. Prudential Ins. Co. v Wadford (1958) 232 SC 476, 102 SE2d 889. A creditor who, between the date of the execution of the mortgage and the date of its record, enters judgment against the mortgagor on an obligation that was created prior to the date of the mortgage is not within the protection of this section [Code 1962 Section 60‑101] because his extension of credit to the mortgagor was antecedent, not subsequent, to the execution of the mortgage. Prudential Ins. Co. of America v. Wadford (S.C. 1958) 232 S.C. 476, 102 S.E.2d 889. Mortgages And Deeds Of Trust 1321

3. Construction with or repeal by other statutes

The 1988 amendment to the Recording Act, Section 30‑7‑10, which required a statutory lien to be recorded to affect the rights of subsequent purchasers for value “except as otherwise provided by statute” did not relate to the recording of liens on real property, but related only to the recording of security interests in personal property, since the legislative intent behind the amendment was merely to conform the Recording Act to Article 9 of the Uniform Commercial Code, Section 36‑9‑101 et seq. The Lite House, Inc. v. J.C. Roy Co., Inc. (S.C.App. 1992) 309 S.C. 50, 419 S.E.2d 817. Mechanics’ Liens 197

A mechanic’s lien was not enforceable against one who had purchased the property prior to the recording of the lien, despite the provision of Section 30‑7‑10 that a purchaser for value without notice takes free of unfiled mechanic’s liens “except as otherwise provided by statute,” since Section 29‑5‑370 merely permits the bringing of an action to enforce a lien against a subsequent purchaser and does not address the issue of priority between a subsequent purchaser and a person performing labor or furnishing materials. The Lite House, Inc. v. J.C. Roy Co., Inc. (S.C.App. 1992) 309 S.C. 50, 419 S.E.2d 817.

This section, insofar as it applied to the perfection of security interests in consumer goods, has been repealed by the Uniform Commercial Code, and the provisions of the latter are controlling. Kimbrell’s Furniture Co., Inc. v. Friedman (S.C. 1973) 261 S.C. 172, 198 S.E.2d 803.

That part of this section providing that in order to bind a bona fide purchaser for value all leases made for more than a year should be recorded was not impliedly repealed by what is now Section 27‑33‑30 which requires that, in order to give notice to third persons, any lease or agreement for the use or occupancy of real estate shall be recorded in the same manner as a deed. Barksdale v. Hinson (S.C. 1948) 212 S.C. 1, 46 S.E.2d 170.

This section must be construed in connection with what is now Section 27‑23‑50, requiring enforceable agreements to be in writing, since this section can relate to enforceable agreements only. Epps v. McCallum Realty Co. (S.C. 1927) 139 S.C. 481, 138 S.E. 297. Fraudulent Conveyances 154(1); Vendor And Purchaser 231(14.1)

4. Meaning and rights of “subsequent creditors”

The words “subsequent creditors” mean only those who become such after the execution of a mortgage, not including the mortgagee. Simmons v. Greer, 1909, 174 F. 654, 98 C.C.A. 408.

Bona fide purchaser for value without notice prior to recordation of chattel mortgage becomes owner of goods free of lien, and subsequent purchasers succeed to his rights regardless of whether they are bona fide purchasers for value without notice. Goodwin v. Harrison (S.C. 1957) 231 S.C. 243, 98 S.E.2d 255.

4.5. Subsequent purchasers

Subsequent purchasers are entitled to rely on recorded deeds and plats to determine their rights in respect to property. Murrells Inlet Corp. v. Ward (S.C.App. 2008) 378 S.C. 225, 662 S.E.2d 452, rehearing denied, certiorari denied. Vendor And Purchaser 231(1)

Both deeds and easements are valid to subsequent purchasers without notice when they are recorded. Murrells Inlet Corp. v. Ward (S.C.App. 2008) 378 S.C. 225, 662 S.E.2d 452, rehearing denied, certiorari denied. Easements 22; Vendor And Purchaser 231(1)

5. Meaning and determination of “resides” or “residence”

“Resides” or “residence” means something more than a mere physical presence in a place, and something less than a domicile. The term clearly imports a fixed abode for the time being. G. A. C. Finance Corp. v. Citizens and Southern Nat. Bank of S. C. (S.C. 1959) 234 S.C. 205, 107 S.E.2d 315.

Conflict in evidence as to residence of mortgagor on date of execution of chattel mortgage necessitated submission of issue to jury. G. A. C. Finance Corp. v. Citizens and Southern Nat. Bank of S. C. (S.C. 1959) 234 S.C. 205, 107 S.E.2d 315.

6. Notice requirements; actual or constructive knowledge

Notice under this section is a legal issue. Armour & Co. v Ross (1906) 75 SC 201, 55 SE 315. Charleston Live Stock Co. v Collins (1908) 79 SC 383, 60 SE 944.

If the paper under consideration can be regarded as an instrument in writing in the nature of a mortgage and it was duly recorded, the language of the section implies very strongly, if not necessarily, that recordation would operate as constructive notice. Arthur v Screven (1893) 39 SC 77, 17 SE 640. Francis v Francis (1907) 78 SC 178, 58 SE 804. Brayton v Beall (1906) 73 SC 308, 53 SE 64.

Additional related cases, as to when record of mortgage is not notice of terms of bond, see Equitable Bldg. & Loan Ass’n v Corley (1905) 72 SC 404, 52 SE 48. Miller v Wroton (1908) 82 SC 97, 63 SE 62, reh den 82 SC 109, 63 SE 449. Ex parte Anderson (1909) 82 SC 131, 62 SE 513, reh dismd 82 SC 140, 63 SE 354. National Bank of Newberry v Livingston (1930) 155 SC 264, 152 SE 410. Williams v Jones (1906) 74 SC 258, 54 SE 558. Sheorn v Robinson (1884) 22 SC 32 (superseded by statute as stated in Foster v Bailey, 82 SC 378, 64 SE 423).

Spence v. Spence (S.C. 2006) 2005 WL 3719639, [main volume] withdrawn and superseded on denial of rehearing 368 S.C. 106, 628 S.E.2d 869, rehearing denied.

Notice of real estate sales is given only by actual record, and mere possession of the land is insufficient to charge subsequent purchasers with notice. Savannah Timber Co. v. Deer Island Lumber Co., 1918, 258 F. 777. Vendor And Purchaser 232(1)

Proof that subsequent creditor did not know of existence of property covered by unrecorded mortgage does not protect the mortgagee under this section, as the section makes no such exception in the protection afforded to subsequent creditors without notice. Tyson v. National Discount Corp., 1957, 149 F.Supp. 592, affirmed 247 F.2d 18.

The fact that defendant purchased oats from an employee of a farmer who had given a crop and chattel mortgage which was properly recorded, and did not know that the oats belonged to mortgagor, does not absolve him of the lien of the mortgage. U. S. v. Brabham, 1954, 122 F.Supp. 570.

Where a mortgagee had not only properly recorded a crop and chattel mortgage, but had also mailed the defendant a mortgagor list which included the name of the farmer who had given the crop mortgage, the defendant had both constructive and actual knowledge of the existence of the mortgage. U. S. v. Brabham, 1954, 122 F.Supp. 570. Chattel Mortgages 147; Chattel Mortgages 150(3)

Where a purchaser has constructive notice of a recorded crop mortgage, the purchaser’s good faith is immaterial; he may be held for conversion, and the fact that the converter acted in good faith is no defense to an action by the mortgagee for his conversion. U. S. v. Brabham, 1954, 122 F.Supp. 570.

Attorney who represented all parties at closing, conducted title search, and knew of prior mortgage held by guarantor of promissory note was mortgagee’s agent, and, thus, mortgagee had actual notice of guarantor’s prior mortgage such that equitable subrogation was not a proper remedy in action by mortgagee against mortgagor and guarantor for foreclosure and reformation. Independence Nat. Bank v. Buncombe Professional Park, LLC (S.C.App. 2013) 402 S.C. 514, 741 S.E.2d 572, rehearing denied, certiorari granted, reversed 411 S.C. 605, 769 S.E.2d 663. Subrogation 31(4); Subrogation 38

If there are circumstances sufficient to put a real property purchaser upon the inquiry, he is held to have notice of everything which that inquiry, properly conducted, would certainly disclose, but constructive notice goes no further; it stands upon the principle that the party is bound to the exercise of due diligence, and is assumed to have the knowledge to which that diligence would lead him, but he is not held to have notice of matter which lies beyond the range of that inquiry and which that diligence might not disclose. Spence v. Spence (S.C. 2006) 368 S.C. 106, 628 S.E.2d 869, rehearing denied. Vendor And Purchaser 229(1)

Constructive or inquiry notice in the context of a real estate transaction often is grounded in an examination of the public record because it is the proper recording of documents asserting an interest or claim in real property which gives constructive notice to the world; the recording of a document alerts all future grantees of the rights of the recorder because the law assumes the grantee will search the index and discover the interest or claim. Spence v. Spence (S.C. 2006) 368 S.C. 106, 628 S.E.2d 869, rehearing denied. Vendor And Purchaser 231(1)

A purchaser of real property has actual notice of a title defect or other claim, lien, or interest adverse to his own in a particular property when he actually knows about the defect or claim, or when a reasonable person, if made aware of the same information known to the buyer, would be charged with actual notice of the defect or claim. Spence v. Spence (S.C. 2006) 368 S.C. 106, 628 S.E.2d 869, rehearing denied. Vendor And Purchaser 228(1); Vendor And Purchaser 229(1)

There are two basic forms of notice by which a purchaser may be charged with knowledge of the rights of another in real property: actual notice and constructive/inquiry notice. Spence v. Spence (S.C. 2006) 368 S.C. 106, 628 S.E.2d 869, rehearing denied. Vendor And Purchaser 226(1)

Fraudulent mortgage satisfaction was properly set aside, notwithstanding subsequent purchaser’s contention that it would be inequitable to do so, given more than five‑year delay by mortgagee in enforcing note and questionable nature of related transactions, inasmuch as subsequent purchaser acquired property after mortgagee filed notice of lis pendens in foreclosure action, and thus had at least constructive notice of litigation involving property. MI Co., Ltd. v. McLean (S.C.App. 1997) 325 S.C. 616, 482 S.E.2d 597, rehearing denied, certiorari denied. Mortgages And Deeds Of Trust 1173

A federal tax sale purchaser did not hold the legal title to the property he had purchased, even though his deed was recorded before that of a subsequent county tax sale purchaser and thus would take priority under the recording statute, Section 30‑7‑10, since county tax liens take priority and survive as first liens on property, even after conveyance to a federal tax sale purchaser. Taylor v. Mill (S.C. 1992) 310 S.C. 526, 426 S.E.2d 311.

Unless a notation of payment for acknowledgment of debt is recorded upon the record of the mortgage at the appropriate office ‑ the office of the register of deeds or the clerk of the court ‑ it will not preserve the lien beyond the 20‑year period set forth in Section 29‑1‑10. Thus, entries of payments in a mortgagee’s receipt book were incompetent to rebut the statutory presumption of payment of the lien upon a lapse of 20 years from the date of the mortgage. Hart v. Campbell (S.C.App. 1989) 298 S.C. 313, 380 S.E.2d 431.

Where a mortgage on property was not properly indexed, it was not properly recorded for notice purposes under Section 30‑7‑10. Liberty Loan Corp. of Darlington, S.C. v. Mumford (S.C.App. 1984) 283 S.C. 134, 322 S.E.2d 17, certiorari granted 284 S.C. 367, 326 S.E.2d 657, certiorari dismissed 287 S.C. 254, 335 S.E.2d 805. Mortgages And Deeds Of Trust 1302

One in possession of personal property is presumed to be the owner and one purchasing such property is required to use only reasonable diligence to ascertain if there are any defects in the title thereto. Clanton’s Auto. Auction Sales, Inc. v Harvin (1961) 238 SC 352, 120 SE2d 237. Ex parte Dort (S.C. 1961) 238 S.C. 506, 121 S.E.2d 1. Property 9; Sales 2933

A memorandum as to sale, not recorded, would amount to no more than an unrecorded reservation of interest in the automobile, which would not be effective as against subsequent creditors without notice. Ex parte Dort (S.C. 1961) 238 S.C. 506, 121 S.E.2d 1.

Retention of all indicia of title, which, at most, might be termed an unrecorded reservation of interest, would not be effective as against subsequent creditors without notice. Clanton’s Auto Auction Sales, Inc. v. Harvin (S.C. 1961) 238 S.C. 352, 120 S.E.2d 237.

Either actual or constructive notice will prevent the plea of bona fide purchaser for value without notice. Epps v. McCallum Realty Co. (S.C. 1927) 139 S.C. 481, 138 S.E. 297. Vendor And Purchaser 228(1)

Possession of a purchaser under a parol agreement is notice of his right, and such rule is not changed by this section. Farr v. Sprouse (S.C. 1925) 133 S.C. 93, 130 S.E. 210.

Where a purchase money mortgage is properly recorded as required by this section, it operates as constructive notice to subsequent purchasers, though the deed to the mortgagor was not recorded. Van Diviere v. Mitchell (S.C. 1895) 45 S.C. 127, 22 S.E. 759. Vendor And Purchaser 231(17)

7. Priorities among competing claims

All claims of antecedent creditors are extinguished by mortgage and, as between mortgagee and subsequent creditors, rights of latter must prevail. Re Cannon (1903) 121 F 58. Re J. C. H. Claussen & Co. (1908, DC SC) 164 F 300, affd (CA4 SC) 174 F 654.

Additional related cases as to priorities, see Armstrong v Carwile (1900) 56 SC 463, 35 SE 196. Summers v Brice (1892) 36 SC 204, 15 SE 374. Re American Slicing Mach. Co. (1923) 125 SC 214, 118 SE 303. Williamson v Hotel Melrose (1918) 110 SC 1, 96 SE 407.

A mortgage recorded out of time is held to take effect from that date as respects priorities. In re Syleecau Mfg. Co. (D.C.S.C. 1922) 17 F.2d 503. Mortgages And Deeds Of Trust 1302

Mortgagee is not entitled to share with subsequent creditors who have acquired rights by mortgagee’s failure to record mortgage. Simmons v. Greer, 1909, 174 F. 654, 98 C.C.A. 408.

The property rights of the seller under a conditional sales contract were superior to tax liens filed by the Federal Government against the property of the conditional buyer, of which liens one was filed before the conditional sale and one was filed after the sale and before the conditional sales contract was recorded. U.S. v. Anders Contracting Co., 1953, 111 F.Supp. 700.

In the common law and in equity, a purchase money mortgage will ordinarily be given priority over other security instruments in realty; however, if the mortgage holder has notice of a prior purchase money mortgage, then it cannot prevail under the recording statute by virtue of filing first. Regions Bank v. Wingard Properties, Inc. (S.C.App. 2011) 394 S.C. 241, 715 S.E.2d 348. Mortgages And Deeds Of Trust 1302; Mortgages And Deeds Of Trust 1305; Mortgages And Deeds Of Trust 1352

Mortgage recording statute did not give bank’s mortgage priority over purchaser of lot’s equitable lien in bank’s foreclosure action against developer, even though purchaser failed to ensure that his down payment was received by developer prior to closing, where bank had knowledge of purchaser’s prior interest in lot when bank recorded mortgage and bank would not have given developer construction loan if developer had not already sold lot to purchaser. Regions Bank v. Wingard Properties, Inc. (S.C.App. 2011) 394 S.C. 241, 715 S.E.2d 348. Mortgages And Deeds Of Trust 1305

A bona fide purchaser must show that actual payment, acquiring of legal title, and bona fide purchase occurred before he had notice of a title defect or other adverse claim, lien, or interest in the property. Code 1976, Section 30‑7‑10. Spence v. Spence (S.C. 2006) 368 S.C. 106, 628 S.E.2d 869, rehearing denied. Vendor And Purchaser 220

A vendee’s recorded contract for deed was entitled to priority over a subsequent judgment creditor’s claim against the vendor of the property, although the vendee was not to receive the deed until he finished paying for the property, since the vendee’s contract was required to be recorded pursuant to Section 30‑7‑10, whereupon he was treated as the owner of the land. Stephens v. Jenkins (S.C. 1994) 312 S.C. 233, 439 S.E.2d 849.

The “ownership right” in “marital property” is acquired during marriage. “Marital property” as such does not exist until the date when marital litigation is filed or commenced. The “ownership right” in “marital property,” therefore, cannot attach until that property is created by the filing of marital litigation. Thus, a wife’s “ownership right” did not attach until the date she filed the divorce petition and a bank’s judgment lien which attached when it was recorded 3 years earlier had priority. Prosser v. Pee Dee State Bank (S.C. 1988) 295 S.C. 212, 367 S.E.2d 698. Divorce 681; Marriage And Cohabitation 425

The attempted purchase of real property by a bona fide purchaser for value without notice did not give the would‑be purchaser priority over the holder of an earlier tax lien and tax title, even though the lien was not recorded. Von Elbrecht v. Jacobs (S.C.App. 1985) 286 S.C. 240, 332 S.E.2d 568.

In an action brought by a mother to foreclose a mortgage executed by her son on his marital home to secure loans made by the mother, an appellate court would hold that since the validly recorded mortgage was prior in time to the subsequent judgment for equitable division in favor of the son’s wife, and therefore, the mortgage was accorded priority pursuant to Section 30‑7‑10. Hursey v. Hursey (S.C.App. 1985) 284 S.C. 323, 326 S.E.2d 178. Mortgages And Deeds Of Trust 1328

Prior to the 1958 amendment to this section, where a prior chattel mortgage was recorded after a subsequent mortgage executed on same property without notice, but before subsequent mortgage was recorded, subsequent mortgage had priority over mortgage first executed. South Carolina Nat. Bank v. Guest (S.C. 1958) 232 S.C. 367, 102 S.E.2d 215.

Prior creditor was unable to benefit under this section, see Goodrich Silvertown v. Rogers (S.C. 1938) 189 S.C. 101, 200 S.E. 91.

The lien of a recorded mortgage is prior to that of a mechanic for repairs subsequently made. R. H. Nesbitt Auto Co. v. Whitlock (S.C. 1920) 113 S.C. 519, 101 S.E. 822.

8. Federal courts; bankruptcy

Federal courts, in passing on the effect to be given registration statutes and the failure to comply with them, are bound by decisions of the state courts interpreting such statutes. Firestone Tire & Rubber Co. v Cross (1927, CA4 SC) 17 F2d 417. Hayden v Prevatte (1971, DC SC) 327 F Supp 635.

Where at time chattel mortgages were recorded, the mortgagor was known to be insolvent, and an actual adjudication in bankruptcy having been made the following month, all of the elements of a preferential transfer were present, and the mortgagee should account to the trustee in bankruptcy for the chattels repossessed and removed by it. National Discount Corp. v. Tyson (C.A.4 (S.C.) 1957) 247 F.2d 18.

Under the laws of South Carolina, chattel mortgages are ineffective as against subsequent creditors until they are recorded, so that under the provisions of the Bankruptcy Act as to preferential transfers, the transfers of the security can be deemed to be made not earlier than the recording dates. National Discount Corp. v. Tyson (C.A.4 (S.C.) 1957) 247 F.2d 18.

The rule of the state courts as to recordation of instruments is applied in bankruptcy courts. Industrial Finance Corp. v. Capplemann, 1922, 284 F. 8.

Trustee in bankruptcy is entitled to recover property taken by a holder of an unrecorded trust receipt. Industrial Finance Corp. v. Capplemann, 1922, 284 F. 8.

The transfer of goods by a bankrupt, before a bankruptcy, to a chattel mortgagee (voluntarily or involuntarily) can be voided as a preference and a constructive fraud on the other creditors, when the chattel mortgages, although given earlier, were recorded within four months of the adjudication of bankruptcy. Tyson v. National Discount Corp., 1957, 149 F.Supp. 592, affirmed 247 F.2d 18. Bankruptcy 2602.1; Bankruptcy 2645.1

Under South Carolina law as predicted by bankruptcy judge in that state, recording of mortgage executed by Chapter 12 debtor and his nondebtor‑wife that contained “future advances” clause, as well as of subsequent mortgage indicating that debtor and his wife, as joint mortgagors, specifically agreed that mortgage would secure any advance later obtained by any one of the mortgagors, provided constructive notice that first mortgage secured debtor’s indebtedness on intervening promissory note executed only by him and not by his nondebtor‑wife, at least to extent of debtor’s 50% interest in mortgaged property, so that mortgagee had lien for sums owing on this note that was entitled to priority against creditor that obtained judgment only against debtor and his farming company, and that recorded its judgment subsequent to recording of mortgages. In re Davis (Bkrtcy.D.S.C. 2013) 490 B.R. 221. Mortgages And Deeds Of Trust 1328

Under South Carolina law, recording of conveyance of debtor’s property to related corporate entity, for stated consideration of three dollars and other entity’s assumption of mortgage debt, did not serve as constructive notice to existing trade creditor with small claim in amount of $266.72— that property had been fraudulently transferred, of kind sufficient to start three‑year statute of limitations on creditor’s fraudulent conveyance claims under the Statute of Elizabeth. In re J.R. Deans Co., Inc. (Bkrtcy.D.S.C. 2000) 249 B.R. 121. Limitation Of Actions 100(13)

9. Particular instruments; mortgages—In general

Additional related cases as to mortgages, see Legatees of Ash v Executor of Ash (1793) 1 SCL 304. Executors of Ashe v Executors of Livingston (1797) 2 SCL 80. House v Brailsford (1817) 10 SCL 31. Ex parte Leland (1819) 10 SCL 460. Hampton v Levy (1825) 6 SC Eq 107. Thayer v Cramer (1826) 6 SC Eq 395. Nixon v Bynum (1829) 17 SCL 148. Martin v Sale (1830) 8 SC Eq 1. Thayer v Davidson (1831) 8 SC Eq 412. Barnwell v Porteus (1835) 11 SC Eq 219. Smith v Osborne (1833) 10 SC Eq 340. Schultz v Carter (1844) 17 SC Eq 533. Barr v Kinard (1848) 34 SCL 73. Ryan v Clanton (1848) 34 SCL 411. Boyce v Boyce (1853) 27 SC Eq 302. Bryce v Bowers (1859) 32 SC Eq 41. McKnight v Gordon (1867) 34 SC Eq 222. Williams v Beard (1870) 1 SC 309. Miles v King (1874) 5 SC 146. Haynsworth v Bischoff (1875) 6 SC 159. Annely v De Saussure (1879) 12 SC 488. Sternberger v McSween (1880) 14 SC 35. King v Fraser (1885) 23 SC 543. Blohme v Lynch (1887) 26 SC 300, 2 SE 136. South Carolina Loan & Trust Co. v McPherson (1887) 26 SC 431, 2 SE 267. McGowan v Reid (1887) 27 SC 262, 3 SE 337. Carraway v Carraway (1887) 27 SC 576, 5 SE 157. Bredenberg v Landrum (1890) 32 SC 215, 10 SE 956. Norwood v Norwood (1892) 36 SC 331, 15 SE 382.

When bank, which executed mortgages which were not recorded to secure depositor for abstraction of his bonds, had subsequent creditors, such unrecorded mortgages were invalid against such creditors. Bradley v. Guess (S.C. 1932) 165 S.C. 161, 163 S.E. 466. Mortgages And Deeds Of Trust 1356

One holding a chattel mortgage on automobiles, which described them as “three new Chrysler automobiles at Denmark and Orangeburg,” which was recorded in the county where the owner of the property resided, as required by this section, had a claim which was superior to that of a credit company claiming under trust receipts which were not recorded in the proper county. Garris v. Commercial Credit Co. (S.C. 1929) 149 S.C. 498, 147 S.E. 601.

The provision of this section that a mortgage of real estate shall be recorded in the office of the register of mesne conveyances does not require such instrument to be recorded in any designated book. Armstrong v Austin (1895) 45 SC 69, 22 SE 763 (superseded by statute on issue of improper indexing as stated in Liberty Loan Corp. v Mumford (App) 283 SC 134, 322 SE2d 17, cert gr 284 SC 367, 326 SE2d 657 and cert dismd 287 SC 254, 335 SE2d 805). Cox v. Enterprise Bank (S.C. 1920) 115 S.C. 191, 104 S.E. 693.

A deed with a contract to reconvey on the payment of a debt constitutes a mortgage, or is “in the nature of a mortgage,” and is required to be recorded under this section. Francis v. Francis (S.C. 1907) 78 S.C. 178, 58 S.E. 804. Mortgages And Deeds Of Trust 830

Failure to record chattel mortgage, see Wardlaw v. Troy Oil Mill (S.C. 1906) 74 S.C. 368, 54 S.E. 658, 114 Am.St.Rep. 1004.

An instrument reciting that in consideration of a certain sum advanced by another to the signer, “in one gray mule,” the signer bargains and sells the mule to the other, which was executed at the same time as a note made by the signer to the other for the sum stated, is “an instrument in writing in the nature of a mortgage,” within the meaning of this section. Quattlebaum v. Taylor (S.C. 1896) 45 S.C. 512, 23 S.E. 617. Chattel Mortgages 150(1)

An instrument with all the requisites of a mortgage of land, except a seal, is not an instrument “in the nature of a mortgage” within the meaning of this section. Arthur v. Screven (S.C. 1893) 39 S.C. 77, 17 S.E. 640. Mortgages And Deeds Of Trust 1308

Instruments which are and are not in the nature of a mortgage, see Arthur v. Screven (S.C. 1893) 39 S.C. 77, 17 S.E. 640.

Under this section where a mortgage is given on real estate to secure future advances to be made within a specified time and at the expiration of such time all advances are repaid and the mortgage, by a secret agreement, is renewed to secure further advances, a second mortgage, which is made and duly recorded thereafter, although given to secure an antecedent indebtedness, displaces the lien of the renewed first mortgage for money advanced under the renewal. Norwood v. Norwood (S.C. 1892) 36 S.C. 331, 15 S.E. 382, 31 Am.St.Rep. 875.

Where a party seeks to recover possession of personal property, claiming through a mortgage, if the defendant undertakes to defend by showing that he is a subsequent purchaser for valuable consideration without notice, his defense does not rest upon any equitable principle, but upon his legal rights as declared by statute. Gregory v. Ducker (S.C. 1889) 31 S.C. 141, 9 S.E. 780.

Under this section a mortgage not duly recorded is practically null and void, is no mortgage, so far as subsequent creditors or purchasers without notice are concerned and this is so without inquiry into the equities of the parties, but simply as a matter of express statutory enactment. Gregory v. Ducker (S.C. 1889) 31 S.C. 141, 9 S.E. 780.

Purchaser for value without notice from a purchaser in possession with notice is protected against an unrecorded chattel mortgage. London v. Youmans (S.C. 1889) 31 S.C. 147, 9 S.E. 775, 17 Am.St.Rep. 17.

Even if this section would apply to a verbal agreement by a husband that land to be afterward acquired should stand as security for money then advanced by his wife, it would not apply to such an agreement made before the enactment of this section. Miller v. Wroton (S.C. 1908) 82 S.C. 97, 63 S.E. 62, rehearing denied 82 S.C. 97, 63 S.E. 449.

The fact that a written instrument in the nature of a mortgage was actually transcribed in the records of the county where the land was located is of no effect under this section and gives no constructive notice where the instrument was not proven or acknowledged, so as to entitle it to recordation. Georgia Railroad Bank v. Koppel, 1917, 246 F. 390, 158 C.C.A. 454. Mortgages And Deeds Of Trust 1308

10. —— Bond for title, particular instruments; mortgages

Under the laws of this State, a bond for title is not a mere “chose in action,” but conveys a substantial interest in the land and this section requires an assignment of a bond for title, given by one who subsequently became a bankrupt to secure a debt, to be recorded. Re Rosenthal (1916, DC Ga) 238 F 597, affd (CA5 Ga) 246 F 390. Georgia Railroad Bank v Koppel (1917, CA5 Ga) 246 F 390.

11. —— Executory land contracts; bailment contracts, particular instruments; mortgages

If executory contract is not recorded, possession will not operate as constructive notice thereof. Van Ness v. Schachte (S.C. 1928) 143 S.C. 429, 141 S.E. 721.

An executory contract for the sale of land was held to constitute a deed of conveyance as contemplated by this section, requiring such instruments to be recorded, since such contract conveys or transfers an interest in real estate which may be mortgaged by vendee, and is devisable and descendible and may be assigned or become subject to mechanic’s lien. Epps v. McCallum Realty Co. (S.C. 1927) 139 S.C. 481, 138 S.E. 297.

12. —— Marriage settlements, particular instruments; mortgages

Only settlements in consideration of marriage and before, or in pursuance of agreement made before, are required to be recorded as such. Bank of United States v Brown (1837) 11 SC Eq 558. Napier v Wrightman (1841) 17 SC Eq 357. LePrince v Guillemot (1843) 18 SC Eq 187. Amaker v New (1890) 33 SC 28, 11 SE 386. Trustees of Wadsworthville Poor School v Bryson (1891) 34 SC 401, 13 SE 619.

Unrecorded marriage settlements are void as to creditors concerned. Hanion v McCall (1824) 5 SC Eq 170. Laborde v Penn (1941) 16 SC Eq 448. Fowke v Woodward (1843) 17 SC Eq 233. Harper v Barsh (1858) 31 SC Eq 149. Barsh v Riols (1852) 40 SCL 162.

Settlement upon her by husband after marriage for present consideration need not to be recorded. Bank of United States v. Brown (S.C. 1837) 30 Am.Dec. 380.

Settlement upon a married woman by the court need not be recorded as a marriage settlement. McMeekin v. Edmonds (S.C. 1833) 26 Am.Dec. 203.

A mere executory agreement is not a marriage settlement. Baskins v. Giles (S.C. 1839).

12.5. Duty of attorneys

In the specific context of a judgment lien against real property of a debtor/vendor, the attorney‑client relationship imposes on the attorney representing the debtor/vendor the fiduciary responsibility of protecting the client by getting the judgment lien released. Inglese v. Beal (S.C.App. 2013) 403 S.C. 290, 742 S.E.2d 687. Attorney and Client 109

12.75. Title insurance

Purchasers of residential lot did not fail to mitigate damages, with respect to claim against title insurance company, when they rejected offer to purchase residential lot, after purchasers became aware of easement for federal government and no‑build resolution on lot; purchasers could not have provided potential purchaser with clean title to lot because easement was properly recorded. Lyons v. Fidelity Nat. Title Ins. Co (S.C.App. 2015) 415 S.C. 115, 781 S.E.2d 126, rehearing denied, vacated pursuant to settlement, certiorari dismissed. Insurance 2637(1); Insurance 2637(2)

Easement for federal government and no‑build resolution on residential lot constituted “public records” not located during title search, and, thus, governmental police power exclusion in title insurance policy did not exclude coverage; because company drafted policy, it could have defined term “public record” to exclude zoning laws and regulations or drafted other exclusionary language, but did not do so, and, thus, term was ambiguous as defined in policy and to be construed against company. Lyons v. Fidelity Nat. Title Ins. Co (S.C.App. 2015) 415 S.C. 115, 781 S.E.2d 126, rehearing denied, vacated pursuant to settlement, certiorari dismissed. Insurance 2625; Insurance 2626

13. Review

Court of Appeals would decline to review title insurance company’s claim that any loss should have been calculated based on value of residential lot when it received claim by purchasers of lot, as opposed to calculated based on diminution in value caused by title defects, measured from date lot was purchased, in purchasers’ action against company for breach of contract and bad faith failure to pay insurance claim, following company’s denial of claim, after purchasers became aware of easement for federal government and no‑build resolution on lot; trial court denied purchasers’ motion for summary judgment as to damages, and, thus, issue was not properly before Court of Appeals. Lyons v. Fidelity Nat. Title Ins. Co (S.C.App. 2015) 415 S.C. 115, 781 S.E.2d 126, rehearing denied, vacated pursuant to settlement, certiorari dismissed. Appeal and Error 78(1)

Title insurance company failed to preserve for appellate review claim that purchasers of residential lot failed to mitigate their losses when they demolished mobile home previously located on property, in purchasers’ action against company for breach of contract and bad faith failure to pay insurance claim, following company’s denial of claim, after purchasers became aware of easement for federal government and no‑build resolution on lot; while company raised claim in its motion to reconsider trial court’s grant of partial summary judgment to purchasers, it did not raise issue to court at hearing on motion for summary judgment or by way of written opposition. Lyons v. Fidelity Nat. Title Ins. Co (S.C.App. 2015) 415 S.C. 115, 781 S.E.2d 126, rehearing denied, vacated pursuant to settlement, certiorari dismissed. Appeal and Error 173(2)

Supreme Court would affirm dismissal, for failure to state a claim, of prior vendor’s complaint against bona fide lot purchasers regarding size of lot, even though complaint was dismissed with prejudice when dismissal ordinarily would have been without prejudice and prior vendor was not allowed to filed amended complaint, where prior vendor failed to present any additional factual allegations or a different theory of recovery giving rise to a cause of action upon which relief may be granted, but merely reiterated the same insufficient factual allegations originally pleaded in her complaint, and prior vendor had not asserted or shown the need for additional time to discover facts. Rules Civ.Proc., Rule 12(b)(6). Spence v. Spence (S.C. 2006) 368 S.C. 106, 628 S.E.2d 869, rehearing denied. Deeds 82

In foreclosure action, mechanics lien holder failed to preserve for appellate review contention that mortgage lien holder did not have priority under equitable principles on ground that mechanics lien holder did not rely on a mistaken mortgage satisfaction, where issue was not raised to or ruled on by the trial court. Allendale County Bank v. Cadle (S.C.App. 2001) 348 S.C. 367, 559 S.E.2d 342, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 356 S.C. 412, 589 S.E.2d 752. Mortgages And Deeds Of Trust 2197

**SECTION 30‑7‑20.** Manner and form of recordation of contract affecting recorded lien on real property.

The recordation of any contract in the nature of a subordination, waiver or extension of any lien on real property, created by law or by agreement of the parties, shall be upon the record of the recorded mortgage or other written instrument except that it may be recorded elsewhere, if in the book for the recording of mortgages there should be no place upon the record of the recorded mortgage or other written instrument sufficient for the recordation of such contract in the nature of a subordination, waiver or extension, in which event there shall be entered on the margin of the recorded mortgage or other written instrument in regard to which such contract in the nature of a subordination, waiver or extension has been thus recorded elsewhere an appropriate reference to such recordation, giving the names of the parties thereto and the date and the book and page where such instrument is recorded. But in any county where the records are photographed, or microphotographed, or filmed, and there shall be no place upon the record of the recorded mortgage or other written instrument or upon the margin of the recorded mortgage or other written instrument sufficient for the recordation of such contract in the nature of a subordination, waiver or extension, such documents may be separately recorded as other instruments, and notation of the place of such recordation shall be entered on the index for the mortgage or other written instrument, or in a legible manner in the jacket or other container for such photograph, microphotograph or film. Any contract in the nature of a subordination, waiver or extension of any lien on real property created by law or by agreement of the parties, to be entitled to be recorded as herein provided shall be in writing and witnessed as mortgages of real property are required to be witnessed and not probated when it is upon the original mortgage or other instrument itself, but when it is upon a separate piece then it shall be probated in the same manner as is provided by law for the probating of mortgages of real property.

HISTORY: 1962 Code Section 60‑102; 1952 Code Section 60‑102; 1942 Code Section 8875‑1; 1934 (38) 1518; 1959 (51) 482.

CROSS REFERENCES

Filing of change of corporate name when real property owned, see Section 33‑4‑104.

Form and execution of conveyances, see Sections 27‑7‑10 et seq.

Library References

Mortgages 89.

Records 6.

Westlaw Topic Nos. 266, 326.

C.J.S. Mortgages Section 192.

C.J.S. Records Sections 9 to 14, 17 to 18.

LAW REVIEW AND JOURNAL COMMENTARIES

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

NOTES OF DECISIONS

In general 1

1. In general

Unless a notation of payment for acknowledgment of debt is recorded upon the record of the mortgage at the appropriate office ‑ the office of the register of mesne conveyances or the clerk of the court ‑ it will not preserve the lien beyond the 20‑year period set forth in Section 29‑1‑10. Thus, entries of payments in a mortgagee’s receipt book were incompetent to rebut the statutory presumption of payment of the lien upon a lapse of 20 years from the date of the mortgage. Hart v. Campbell (S.C.App. 1989) 298 S.C. 313, 380 S.E.2d 431.

**SECTION 30‑7‑30.** Release or satisfaction of lien affecting title to real estate.

A release or satisfaction of the lien of any mortgage or other written instrument affecting title to real property as security for the payment of money, made or entered into by the original mortgagee, trustee or his legal representative, or any assignee under an assignment recorded as provided in Section 30‑7‑40 shall be good and effectual, both in law and in equity, for the protection of any subsequent purchaser for a valuable consideration of the property affected by such mortgage or other written instrument, or subsequent creditor obtaining a lien upon such property, notwithstanding any assignment or transfer of such mortgage or other written instrument or of the obligation secured thereby, unless such assignment or transfer shall have been recorded as provided in Section 30‑7‑40 or such purchaser or creditor shall have had actual notice thereof before such purchaser or lien creditor acquired any interest in or claim upon the real estate so encumbered.

HISTORY: 1962 Code Section 60‑103; 1952 Code Section 60‑103; 1942 Code Section 8881; 1932 Code Section 8881; 1924 (33) 928; 1926 (34) 982; 1933 (38) 525.

CROSS REFERENCES

Filing of change of corporate name when real property owned, see Section 33‑4‑104.

Library References

Mortgages 315.

Vendor and Purchaser 231.

Westlaw Topic Nos. 266, 400.

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

C.J.S. Vendor and Purchaser Sections 486 to 487, 491, 496 to 505.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assignments Section 10, Mortgages.

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:5, Assignment of Mortgage or Deed of Trust.

NOTES OF DECISIONS

In general 1

1. In general

A mortgage that has been mistakenly satisfied may be reinstated only where there is no third party who, without notice of the mistake, subsequently and in good faith acquires an interest in the property. Allendale County Bank v. Cadle (S.C.App. 2001) 348 S.C. 367, 559 S.E.2d 342, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 356 S.C. 412, 589 S.E.2d 752. Mortgages And Deeds Of Trust 1173

In foreclosure action, any negligence in mortgage lien holder’s mistakenly satisfying mortgage did not change result that, under equitable principles, it had priority over mechanics lien holders; applicable test was whether mechanics lien holders relied on the mistaken satisfaction, and they failed to establish such reliance. Allendale County Bank v. Cadle (S.C.App. 2001) 348 S.C. 367, 559 S.E.2d 342, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 356 S.C. 412, 589 S.E.2d 752. Mortgages And Deeds Of Trust 1330

**SECTION 30‑7‑40.** Manner of recordation of assignment or transfer of mortgage.

The recordation of such an assignment or transfer as is mentioned in Section 30‑7‑30 shall, to be effective under such section, be upon the record of the recorded mortgage or other written instrument, except that it may be recorded elsewhere in the record for the recording of mortgages should there be no place upon the record of the recorded mortgage or other written instrument sufficient for the recordation of such assignment, in which event there shall be entered on the margin of the recorded mortgage or other written instrument whose assignment has been thus recorded elsewhere an appropriate reference to such recordation, giving the name of the assignee, the date of the assignment and the record and page where recorded.

HISTORY: 1962 Code Section 60‑104; 1952 Code Section 60‑104; 1942 Code Section 8881; 1932 Code Section 8881; 1924 (33) 928; 1926 (34) 982; 1933 (38) 525; 1972 (57) 2633.

CROSS REFERENCES

Filing of change of corporate name when real property owned, see Section 33‑4‑104.

Library References

Mortgages 91.

Records 6.

Vendor and Purchaser 232.

Westlaw Topic Nos. 266, 326, 400.

C.J.S. Mortgages Section 194.

C.J.S. Records Sections 9 to 14, 17 to 18.

C.J.S. Vendor and Purchaser Sections 486 to 487, 491, 506 to 509.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assignments Section 10, Mortgages.

NOTES OF DECISIONS

In general 1

1. In general

Unless a notation of payment for acknowledgment of debt is recorded upon the record of the mortgage at the appropriate office ‑ the office of the register of deeds or the clerk of the court ‑ it will not preserve the lien beyond the 20‑year period set forth in Section 29‑1‑10. Thus, entries of payments in a mortgagee’s receipt book were incompetent to rebut the statutory presumption of payment of the lien upon a lapse of 20 years from the date of the mortgage. Hart v. Campbell (S.C.App. 1989) 298 S.C. 313, 380 S.E.2d 431.

Assignment of mortgage located on final page of mortgage was part of record of recorded mortgage so as to give notice to subsequent purchaser; since assignment was essentially part of mortgage, for purposes of recording, it was unnecessary to separately index document. Mills v. Killian (S.C. 1979) 273 S.C. 66, 254 S.E.2d 556.

**SECTION 30‑7‑50.** Manner in which assignment shall be executed and probated.

Any assignment to be entitled to be recorded as provided in Section 30‑7‑40 shall be in writing and witnessed as mortgages of real property are required to be witnessed and shall not be probated when it is upon, or attached to, the original mortgage itself, but when it is upon a separate piece not attached to the original mortgage itself then it shall be probated in the same way as is now provided by law for the probating of mortgages of real property. Assignment of mortgage forms shall include the name of the mortgagor and the name and address of the mortgagee and the book, page, and date of recording of the original mortgage, and may include a toll free number for the assignee if such a number is available.

HISTORY: 1962 Code Section 60‑105; 1952 Code Section 60‑105; 1942 Code Section 8881; 1932 Code Section 8881; 1924 (33) 928; 1926 (34) 982; 1933 (38) 525; 1996 Act No. 297, Section 1.

CROSS REFERENCES

Filing of change of corporate name when real property owned, see Section 33‑4‑104.

Library References

Vendor and Purchaser 232.

Westlaw Topic No. 400.

C.J.S. Vendor and Purchaser Sections 486 to 487, 491, 506 to 509.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assignments Section 10, Mortgages.

S.C. Jur. Mortgages Section 178, Recording and Priority.

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:5, Assignment of Mortgage or Deed of Trust.

NOTES OF DECISIONS

In general 1

1. In general

Where one assignment of a mortgage was on a sheet of paper which was glued to the original mortgage, and another assignment was on a sheet of paper pinned and clamped with pins similar to that used in clamping and pinning legal papers to the back of same mortgage, the court held that this was a compliance with the provision of this section providing to the effect that assignments need not be probated “where the same is upon the original mortgage itself.” Long Realty Co. v. Breedin (S.C. 1935) 175 S.C. 233, 179 S.E. 47.

**SECTION 30‑7‑60.** Assignment, satisfaction, or release of lien.

Except as otherwise provided by statute, assignments, satisfactions, releases, and contracts in the nature of subordinations, waivers, and extensions of landlords’ liens, laborers’ liens, sharecroppers’ liens, and other liens on personal property, created by law or by agreement of the parties, contracts in the nature of subordinations, waivers, and extensions of liens on real property, created by law or by agreement of the parties, made or entered into by the original mortgagee, lien creditor, or trustee, or his legal representative or any assignee under an assignment recorded as herein or otherwise provided, are good and effectual, both in law and in equity, for the protection of any subsequent purchaser for a valuable consideration of the property affected by the mortgage or other instrument or lien created by law or any subsequent creditor obtaining a lien upon the property, notwithstanding any other assignment, transfer, satisfaction, release, subordination, waiver, or extension contract of the mortgage or other lien, or the obligation secured thereby, unless the other assignment, satisfaction, release, subordination, waiver, or extension contract of the mortgage or other lien or the obligation secured thereby, has been recorded as herein or otherwise provided or the purchaser or creditor has had actual notice thereof before the purchaser or lien creditor acquired any interest in or lien upon the property so encumbered.

HISTORY: 1962 Code Section 60‑106; 1952 Code Section 60‑106; 1942 Code Section 8875‑1; 1934 (38) 1518; 1988 Act No. 494, Section 8(12).

CROSS REFERENCES

Filing of change of corporate name when real property owned, see Section 33‑4‑104.

Library References

Vendor and Purchaser 233.

Westlaw Topic No. 400.

C.J.S. Vendor and Purchaser Section 505.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assignments Section 10, Mortgages.

S.C. Jur. Mortgages Section 178, Recording and Priority.

NOTES OF DECISIONS

In general 1

1. In general

A mortgage that has been mistakenly satisfied may be reinstated only where there is no third party who, without notice of the mistake, subsequently and in good faith acquires an interest in the property. Allendale County Bank v. Cadle (S.C.App. 2001) 348 S.C. 367, 559 S.E.2d 342, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 356 S.C. 412, 589 S.E.2d 752. Mortgages And Deeds Of Trust 1173

In foreclosure action, any negligence in mortgage lien holder’s mistakenly satisfying mortgage did not change result that, under equitable principles, it had priority over mechanics lien holders; applicable test was whether mechanics lien holders relied on the mistaken satisfaction, and they failed to establish such reliance. Allendale County Bank v. Cadle (S.C.App. 2001) 348 S.C. 367, 559 S.E.2d 342, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 356 S.C. 412, 589 S.E.2d 752. Mortgages And Deeds Of Trust 1330

**SECTION 30‑7‑70.** Recording and indexing of certain liens against personal property.

Except as otherwise provided in Chapter 9, Title 36 or by other applicable provisions of law, liens on personal property required to be recorded in the office of the register of deeds or clerk of court in those counties where there is no office of the register of deeds must be witnessed and probated in the manner required for the execution of deeds and must be recorded and indexed in a book entitled Miscellaneous Liens on Personal Property. A separate index showing the name of the lienor and lienee must be maintained for each separate type of lien recorded in this book. The recording officer is entitled to the same fees as are provided for recording of deeds of equal length.

HISTORY: 1962 Code Section 60‑107; 1952 Code Section 60‑107; 1942 Code Section 8875‑1; 1934 (38) 1518; 1972 (57) 2634; 1988 Act No. 494, Section 8(13).

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.

CROSS REFERENCES

Filing of change of corporate name when real property owned, see Section 33‑4‑104.

Library References

Liens 15.

Records 19.

Westlaw Topic Nos. 239, 326.

C.J.S. Records Section 30.

**SECTION 30‑7‑80.** Manner and form of recordation of instruments conveying an interest in or lien on personal property.

Except as otherwise provided by statute, the recordation of the assignments, satisfactions, releases, contracts in the nature of subordinations, waivers, and extensions of chattel mortgages or other instruments conveying an interest in or creating a lien on personal property must be upon the record of the recorded mortgage or other written instrument, except that the instrument may be recorded elsewhere in the book for the recordation of mortgages should there be no place upon the record of the recorded mortgage or other written instrument sufficient for the recordation of the assignment, satisfaction, release, contract in the nature of subordination, waiver, or extension of the lien, in which event there must be entered on the margin of the recorded mortgage or other written instrument whose assignment, satisfaction, release, contract in the nature of subordination, waiver, or extension has been thus recorded elsewhere an appropriate reference to the recordation, giving the names of the parties to the recordation, the date, and the book and page where the instrument is recorded. In any county where the records are photographed, microphotographed, or filmed, and there is no place upon the record of the recorded mortgage or other written instrument, or upon the margin of the recorded mortgage or other written instrument sufficient for the recordation of the assignments, satisfactions, releases, contracts in the nature of subordinations, waivers, and extensions of chattel mortgages or other instruments, the documents may be separately recorded as other instruments, and notation of the place of the recordation must be entered on the index for the mortgage or other written instrument or in a legible manner in the jacket or other container for the photograph, microphotograph, or film. Any assignment, satisfaction, release, contract in the nature of subordination, waiver, or extension of a chattel mortgage or other instrument conveying an interest in or creating a lien on personal property, to be entitled to be recorded as herein provided must be in writing and witnessed, as mortgages of personal property are required to be witnessed and not probated when it is upon the original mortgage or other instrument itself, but when it is upon a separate piece then it must be probated in the same way as is required for the probating of mortgages of personal property.

HISTORY: 1962 Code Section 60‑108; 1952 Code Section 60‑108; 1942 Code Section 8875‑1; 1934 (38) 1518; 1959 (51) 483; 1988 Act No. 494, Section 8(14).

CROSS REFERENCES

Filing of change of corporate name when real property owned, see Section 33‑4‑104.

Library References

Chattel Mortgages 85.

Liens 9.

Records 6.

Westlaw Topic Nos. 239, 326, 76.

C.J.S. Records Sections 9 to 14, 17 to 18.

**SECTION 30‑7‑90.** Notice of unrecorded instrument.

No possession of real property described in any instrument of writing required by law to be recorded shall operate as notice of such instrument. Actual notice shall be deemed and held sufficient to supply the place of registration only when such notice is of the instrument itself or of its nature and purport.

HISTORY: 1962 Code Section 60‑109; 1952 Code Section 60‑109; 1942 Code Section 8882; 1932 Code Section 8882; Civ. C. ‘22 Section 5313; Civ. C. ‘12 Section 3543; Civ. C. ‘02 Section 2457; R. S. 1969; 1888 (20) 15.

CROSS REFERENCES

Filing of change of corporate name when real property owned, see Section 33‑4‑104.

Library References

Vendor and Purchaser 232.

Westlaw Topic No. 400.

C.J.S. Vendor and Purchaser Sections 486 to 487, 491, 506 to 509.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assignments Section 37, Recording of an Assignment.

S.C. Jur. Covenants Section 5, Methods of Creating and Requirements of Recording.

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

S.C. Jur. Mortgages Section 96, Constructive Notice.

Forms

Am. Jur. Pl. & Pr. Forms Vendor and Purchaser Section 1 , Introductory Comments.

LAW REVIEW AND JOURNAL COMMENTARIES

The Recording of Land Titles in South Carolina (Herein of Bona Fide Purchase of Land): A Title Examiner’s Guide, 10 SC LQ 346 (1958).

NOTES OF DECISIONS

In general 1

1. In general

The law imputes to a purchaser of realty notice of the recitals in the instruments forming his chain of title. Moyle v Campbell (1923) 126 SC 180, 119 SE 186. National Bank of Newberry v Livingston (1930) 155 SC 264, 152 SE 410.

Applied in Richardson v Ellis (1919) 112 SC 108, 98 SE 846. Foster v Bailey (1909) 82 SC 378, 64 SE 423.

Additional related cases, as to notice to supply lack of registration, see Tart v Crawford (1821) 12 SCL 265. Tart v Crawford (1821) 12 SCL 479. Givens v Branford (1822) 13 SCL 152. Cabiness v Mahon (1922) 13 SCL 273. McFall v Sherrard (1824) 16 SCL 295. Anderson v Harris (1829) 17 SCL 315. Kottman v Ayer (1846) 32 SCL 552. Martin v Sale (1830) 8 SC Eq 1. Page v Street (1843) 17 SC Eq 159. Fowke v Woodward (1843) 17 SC Eq 233. Cooper v Day (1843) 18 SC Eq 26. Wallace v Craps (1848) 34 SCL 266. Ingrem v Phillips (1849) 34 SCL 565. Cape Fear S. B. Co. v Conner (1831) 37 SCL 335. Knotts v Geiger (1850) 38 SCL 32. Anderson v Aiken (1860) 32 SC Eq 232. C. Aultman & Co. v Utsey (1891) 34 SC 559, 13 SE 848. Sweatman v Edmunds (1888) 28 SC 58, 5 SE 165. Daniel v Hester (1888) 29 SC 147, 7 SE 65 (superseded by statute as stated in Foster v Bailey, 82 SC 378, 64 SE 423). Wardlaw v Troy Oil Mill (1906) 74 SC 368, 54 SE 658. Manigault v Lofton (1907) 78 SC 499, 59 SE 534. Ex parte Anderson (1909) 82 SC 131, 62 SE 513, reh dismd 82 SC 140, 63 SE 354. Sheorn v Robinson (1884) 22 SC 32 (superseded by statute as stated in Foster v Bailey, 82 SC 378, 64 SE 423). Biemann v White (1885) 23 SC 490. Graham v Nesmith (1886) 24 SC 285.

Notice of real estate sales is given only by actual record, and mere possession of land is insufficient to charge subsequent purchasers with notice, unless actual notice can be proved of the deed or instrument. Savannah Timber Co. v. Deer Island Lumber Co., 1918, 258 F. 777. Vendor And Purchaser 232(1)

A plaintiff claiming land under a marriage settlement deed has the burden of proving that his deed had either been recorded or the defendant, claiming as an innocent purchaser for value, had actual notice of the nature and purport of the deed. Moyle v. Campbell (S.C. 1923) 126 S.C. 180, 119 S.E. 186. Vendor And Purchaser 242

Notice of a father’s deed to his sons, which was void for want of delivery, could not affect the rights of a subsequent bona fide purchaser, in view of this section. Powers v. Rawles (S.C. 1922) 119 S.C. 134, 112 S.E. 78. Vendor And Purchaser 228(4)

The refusal to charge that notice of the undelivered deed could not affect the rights of a subsequent purchaser for value was held error. Powers v. Rawles (S.C. 1922) 119 S.C. 134, 112 S.E. 78. Vendor And Purchaser 228(4)

A purchaser of land, possession of which is held under an unrecorded deed, is not entitled to the protection of innocent purchaser if he had notice of such circumstances as were sufficient to put him on inquiry, which, if pursued with due diligence, would have led to knowledge of the rights of those holding possession under the unrecorded deed. Oliver v. McWhirter (S.C. 1919) 112 S.C. 555, 100 S.E. 533.

Cited in Williamson v. Hotel Melrose (S.C. 1918) 110 S.C. 1, 96 S.E. 407.

Quoted in Beck v. Northwestern R. Co. of South Carolina (S.C. 1914) 99 S.C. 310, 83 S.E. 335.

Section does not apply to possession under a parol contract for the sale of land, and such possession is notice of the equity of the party in possession. Folk v. Brooks (S.C. 1912) 91 S.C. 7, 74 S.E. 46.

Section does not affect the rule that possession by a grantor in a deed which was in fact a mortgage is notice to a subsequent purchaser of the rights of such grantor. Bell v. Edwards (S.C. 1907) 78 S.C. 490, 59 S.E. 535.

**SECTION 30‑7‑100.** Assignment of mortgage or note; collateral assignment; obligations involving Farm Credit System institutions.

(A) For purposes of this section:

(1) “Assignment of note” means every document endorsing, assigning, transferring, pledging, or conveying an interest in a note and mortgage securing the note, whether set forth in a separate instrument or contained in a loan agreement, financing agreement, or security agreement or given in conjunction with financing arrangements, involving Farm Credit System institutions.

(2) “Collateral assignment” means any assignment of a note and mortgage made and delivered in connection with any extension of credit involving Farm Credit System institutions, where the assignor retains the right to collect or to apply the note payments after assignment and prior to default.

(3) “Farm Credit System institution” means a Farm Credit Bank, (formerly Federal Land Bank or Federal Intermediate Credit Bank), an Agricultural Credit Bank, an agricultural credit association (ACA), a production credit association (PCA), a federal land bank association (FLBA), or a federal land credit association (FLCA), chartered by the federal Farm Credit Administration pursuant to the Farm Credit Act of 1971, as amended, or an act of the United States Congress, or any successor or assignee of any of the foregoing.

(B) It is not necessary in order to perfect a valid written assignment of a mortgage or other agreement mortgaging real property or an interest in real property, which is pledged as security for an obligation involving Farm Credit System institutions, to record the written assignment in the office of the clerk of court or other recording office in the county in which the real property is located. A transfer of the promissory note or other instrument secured by the mortgage or other security instrument by an assignment of note to such an institution, which assignment of note constitutes an effective transfer or assignment under the laws of this State, constitutes an effective assignment of the mortgage or other security instrument. The assignee of the note is entitled to enforce all obligations contained in the promissory note or other agreement and possesses all of the rights of the assignor in the mortgage or other security instrument given to a Farm Credit System institution, including the right to foreclose the instrument in accordance with law without restriction. The provisions of this section do not preclude the recordation of a written assignment of a mortgage or other security instrument with or without the promissory note or other instrument that it secures.

(C) The execution of a written document containing an assignment of note is valid and enforceable from the time of execution to pass the interest granted, pledged, assigned, or transferred in the note and the mortgage securing the note as against the assignor, and the transfer is perfected from the time of execution against subsequent assignees, lien creditors, and purchasers for valuable consideration from the assignor; provided, however, that service of process on a Farm Credit System institution that is a mortgagee of record in any foreclosure action, or other action affecting title to the underlying real estate collateral, must be deemed sufficient service to any Farm Credit System institution that is assignee of such mortgage and underlying note as provided herein.

(D) Where an assignment of note is a collateral assignment, after a default under the loan agreement, financing agreement, security agreement, or other 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 note payments and to foreclose the mortgage securing the note subject to the assignment without need for the appointment of a receiver, any act to take possession of the note, or any further demand on the assignor or maker of the note. Unless otherwise agreed, after default the assignee is entitled to notify the maker or other obligor to make payment to the assignee and is also entitled to have possession of any payments or proceeds to which the assignee may be entitled.

(E) This section does not exclude other methods of creating, perfecting, collecting, sequestering, or enforcing a security interest in notes and mortgages provided by the laws of this State.

(F) For documents executed on or after the effective date of this section, the provisions of this section providing that the assignment of mortgages need not be recorded must be reflected in the mortgage in bold print.

HISTORY: 1994 Act No. 398, Section 1.