CHAPTER 11

Recordation of Deeds and Documents of Railroads

**SECTION 30‑11‑10.** Recordation of deeds and other instruments.

 All deeds of conveyance of railroad beds, tracks and rights of way, cars, locomotive engines, rolling stock and other railway equipment, all leases and conditional sales of, and all other instruments in writing relating to, such property in this State, other than mortgages and deeds of trust, delivered or executed on or after January 1 1894 shall be valid, so as to affect from the time of such delivery or execution the rights of subsequent creditors or purchasers for valuable consideration without notice, only when filed in duplicate within forty days from the execution and delivery thereof in the office of the Secretary of State. But the above‑mentioned deeds, leases, mortgages and other conditional sales and instruments in writing, if filed subsequent to the expiration of such period of forty days, shall be valid to affect the rights of subsequent creditors and purchasers for valuable consideration without notice from the date of such record only, one of the copies of any such instrument so filed shall be given its proper file number, indexed and retained in the office of the Secretary of State and the other shall be properly endorsed, giving the file number under which it is to be found and returned.

HISTORY: 1962 Code Section 60‑251; 1952 Code Section 60‑251; 1942 Code Sections 3106, 3107; 1932 Code Sections 3106, 3107; Civ. C. ‘22 Sections 789, 790; Civ. C. ‘12 Sections 705, 706; Civ. C. ‘02 Sections 634, 635; R. S. 554; 1893 (21) 412; 1920 (31) 989; 1937 (40) 428.

Library References

Railroads 67(1).

Records 6.

Westlaw Topic Nos. 320, 326.

C.J.S. Railroads Sections 161 to 163, 165 to 171.

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

**SECTION 30‑11‑20.** Recordation of mortgages and deeds of trust.

 Mortgages or deeds of trust covering the whole or any part of the real property of a railroad company and the appurtenant franchises are valid so as to affect from the time of their execution and delivery the rights of all subsequent creditors and purchasers, when filed within forty days from the execution and delivery of the mortgages or deeds of trust in the office of the Secretary of State. Within six months thereafter the mortgages or deeds of trust must be recorded also in the books provided for the recording of mortgages on real estate in the office of clerk of court or register of deeds of each county in which any part of the real property affected by the mortgages or deeds of trust is situated. The mortgages or deeds of trust, if so filed in the office of the Secretary of State subsequent to the expiration of the period of forty days and also recorded in the books provided for the recording of mortgages on real estate in the office of the clerk of court or register of deeds subsequent to the expiration of the period of forty days are valid to affect the rights of all subsequent creditors and purchasers from the date of the record. Before any mortgage or deed of trust covering property of a railroad company and the appurtenant franchises can be filed by the Secretary of State, copies of the mortgage or deed of trust must be furnished in duplicate, one of which must be given its proper file number, indexed, and retained in his office, and the other must be properly endorsed, giving the file number under which it is to be found and returned.

 Nothing contained in this section may be construed to affect the provisions of Section 58‑15‑920.

 The provisions of this section do not in any way affect any mortgage or deed of trust covering property of a railway company and the appurtenant franchises executed and filed or recorded prior to March 22, 1937.

HISTORY: 1962 Code Section 60‑252; 1952 Code Section 60‑252; 1942 Code Section 8282; 1932 Code Section 8227; Civ. C. ‘22 Section 4791; Civ. C. ‘12 Section 3122; 1903 (24) 80; 1937 (40) 140; 1988 Act No. 494, Section 8(17).

OFFICIAL COMMENT

None.

SOUTH CAROLINA REPORTER’S NOTES

When the South Carolina Legislature adopted the Uniform Commercial Code in 1966, instead of adopting a specific repealer section containing a laundry list of statutes repealed as recommended by the Official Text of the UCC, and by Professor Robert W. Foster of the University of South Carolina Law School, who acted as the South Carolina Reporter for the UCC and prepared an initial list of such statutes which has been modified and updated in this study, the legislature enacted a general repealer section (Section 36‑10‑103) which merely stated: “All acts and parts of acts inconsistent with this act are hereby repealed.” The failure to enact a specific repealer section has caused a number of legal uncertainties which need to be cleared up. For example, Section 27‑23‑80 of the 1976 South Carolina Code requires that agreements “between the vender and vendee or the bailor and bailee of personal property whereby the vender or bailor shall reserve to himself any interest in the property shall be null and void as to subsequent creditors (whether lien creditors or simple contract creditors), or purchases for a valuable consideration without notice, unless such agreement be reduced to writing and recorded in the manner provided by law for the recording of mortgages.” The first question that arises is whether this statute is “inconsistent” with the Uniform Commercial Code and therefore repealed. Although arguments can be made on both sides of this issue, the better argument would appear to be that Section 27‑23‑80 is not inconsistent with the UCC at least to the extent that it deals with true leases and consignments of personal property, since the 1966 UCC only covers leases and consignments that are intended to create security interests in personalty. See Sections 36‑9‑102, and 36‑1‑201(37) [see now Section 36‑1‑203] of the 1976 South Carolina Code. This is the position taken by the Attorney General’s office in 1970‑71 Op. Att. Gen. No. 3201 at pg. 3201. See also In re Bazen, 425 F. Supp. 1184 (D.S.C.) aff’d, 571 F. (2d) 574 (14th Cir. 1977). If that is the case, the next issue is to determine the proper type and place of filing, assuming the transaction in question is a true lease or consignment. Section 27‑23‑80 specifies that the “instrument” be filed in the place “provided by law for the recording of mortgages”; however, the UCC requires that only financing statements need be filed and for most leased items the appropriate place to file would be different from the proper place to file chattel mortgages. While most practitioners have presumably been filing a financing statement in the appropriate office or offices specified by Section 36‑9‑401 it is far from clear that a court would uphold this procedure. A further complicating factor is that a court might well view the filing of a financing statement as an admission that the transaction created a security interest, which could result in legal, tax, and accounting consequences quite different from the expectations of the parties. See In re Lakeshore Transit‑Kenosha, Inc., 7 UCC Rep. 607 (E.D.Wis. 1969). In addition, it is important to note that Section 27‑23‑80 makes the transaction absolutely void as to all subsequent creditors in the event the proper filing is not made. In contrast to this, an unperfected but otherwise attached security interest under the UCC is still valid but is merely subordinated to a fully perfected security interest or other lien under Section 36‑9‑301. Because of the above problems it is highly desirable to repeal Section 27‑23‑80 even if it is not technically inconsistent with the UCC. Further comments on Section 27‑23‑80 are contained in paragraph (A)(1) of the Reporter’s Notes to Section 9. In this connection, Section 36‑9‑408 of the 1988 UCC Amendments specifically authorizes the filing of a special financing statement in a case involving a lease or consignment. This section further provides that the filing will not be a factor in determining whether the lease or consignment is intended for security and therefore covered by Article 9 of the UCC, but if in fact it is determined that a security interest was intended, the filing of the financing statement will constitute perfection of the security interest. Note also that Section 36‑2‑326(3) and Section 36‑9‑114 of the 1988 UCC Amendments contain additional provisions for filing requirements as to consignments.

The list of statutes included in Sections 8 and 9 of this act include all the South Carolina statutes that can reasonably be determined to be inconsistent with the UCC. If the UCC treatment of a particular issue supersedes the pre‑code statutes, the pre‑code statute is repealed in its entirety. However, if only a portion of the pre‑code statute is superseded, the pre‑code statute is amended. Also included in this list are pre‑code statutes which although they technically may not be “inconsistent” with the UCC, ought to be amended or repealed because their continued existence creates confusion and unnecessary uncertainty concerning the interplay between the UCC and other South Carolina laws. The South Carolina Bailment Statute, Section 27‑23‑80 of the 1976 South Carolina Code, discussed above, is one example of this type of statute. See Section 9(A)(1) of this act. Other examples of such statutes are Sections 27‑39‑50 and 27‑39‑260 of the 1976 South Carolina Code dealing with priorities of landlord’s liens. (see Sections 9(A)(2) and 9(A)(3) of this act) and the last paragraph of Section 30‑7‑10 of the 1976 South Carolina Code, which deals with priority of a filed chattel security interest against a landlord’s lien for rent (see paragraph (11) below of the South Carolina Reporter’s Notes to this section).

When the 1976 South Carolina Code was enacted by the Legislature, many statutes in the 1962 South Carolina Code that were obviously inconsistent with the 1966 UCC were not made a part of the 1976 Code but were listed as being impliedly repealed. In order to clear up any question about these statutes, however, they are officially repealed in Section 9(B) of this act. In addition several provisions in the 1962 Code that should have been designated as having been repealed by implication were included in the 1976 Code. These statutes are Sections 33‑9‑130, 30‑6‑160, 30‑5‑170, 56‑19‑640, and 56‑19‑690. See Section 9(A) of this act. Finally there are several sections of the 1962 Code that provide special filing fees for certain counties that are different from the UCC filing fees provided in Part 4 of Article 9. These statutes, designated as local statutes, were not included in the 1976 Code and technically continue to be effective. Because of their inconsistency with the UCC filing fees, these local statutes are repealed. See Section 9(B) of this act.

An additional justification for enacting a specific repealer at this time is to provide a means of tracing these repealed and amended statutes for persons researching legal problems which involve such statutes. For example, some pre‑code filed chattel mortgages are still valid and can be enforced under the old chattel mortgage statutes (See the South Carolina Reporter’s Notes to Section 36‑10‑102 of the 1988 UCC Amendments).

When South Carolina adopted the UCC in 1966 it included a special provision that exempted security interests in property belonging to railroads from the filing requirements of Article 9. See Section 36‑9‑302(3)(b) of the 1976 South Carolina Code. Such security interests are perfected by complying with Section 30‑11‑20 of the South Carolina Code. Since the provisions dealing with perfection of security interests against transmitting utilities contained in the 1972 Text of the UCC apply to railroads and these provisions impose fewer filing requirements than Section 30‑11‑20, Section 36‑9‑302(3)(b) has been revised to omit this exemption. See the South Carolina Reporter’s Notes to Section 36‑9‑302 of the 1988 UCC Amendments. Section 30‑11‑20 has also been amended to delete any reference to personal property. See subsection (17) of this Section 8. All prior filings made pursuant to Section 30‑11‑20 remain valid. See the South Carolina Reporter’s Notes to Section 36‑11‑106 of the 1988 UCC Amendments. Finally, because of the repeal of the statutes requiring chattel mortgage books to be continued, there is a need for a special filing book for recording miscellaneous liens such as landlords’, laborers’, and sharecroppers’ liens currently recorded in the chattel mortgage books. A statute requiring that a book and index for this purpose entitled “Miscellaneous Liens on Personal Property” is provided in amended Section 30‑7‑70. See subsection (13) of this Section 8.

REPORTER’S NOTES TO PARTICULAR SECTIONS OF THE 1976 CODE AMENDED IN SECTION 8

Detailed notes on each of the provisions in the 1976 Code that are amended by this act follow below. Reporter’s Notes on the 1976 and 1962 South Carolina Code provisions that are repealed are found in Section 9.

1. Uniform Commercial Code Section 36‑2‑203 eliminates the effects of a sealed instrument with respect to contracts for the sale of goods. Section 15‑3‑520 of the 1976 South Carolina Code, which creates a twenty‑year statute of limitations for an action upon a sealed instrument, is therefore amended to expressly exclude sales contracts from its coverage in order to make it clear that the Uniform Commercial Code statute of limitation of six years prescribed by UCC Section 36‑2‑725 applies.

2. Section 29‑3‑310 of the 1976 South Carolina Code imposes an obligation on a mortgagee to enter a satisfaction of record of all mortgages after payment within three months after demand made by the mortgagor. Section 36‑9‑404(1) sets out the procedure and duty of the secured party to issue a termination statement when there is no longer an outstanding secured obligation. The reference to personal property in Section 29‑3‑310 is deleted by the amendment, thereby eliminating the overlap. This statute will continue in effect for real property mortgages.

3. Section 29‑3‑330 of the 1976 South Carolina Code prescribes the methods of entering satisfaction of any mortgage instrument. Uniform Commercial Code Section 36‑9‑404(2) sets out the method of terminating a security interest of record in personalty. The amendment to Section 29‑3‑330 deletes the reference to chattel mortgages, thereby eliminating the overlap. This statute will continue to govern the procedure for entering satisfaction of real property mortgages.

4. Section 29‑3‑340 of the 1976 South Carolina Code requires the recording officer, upon production of a certificate that a satisfaction of a mortgage has been entered, to enter a satisfaction on the original mortgage. It applies to mortgages of all types of property. The amendments to Section 29‑3‑340 limit the applicability of the section to real property mortgages. Section 36‑9‑404 sets out the procedure for satisfying security interests in personalty.

5. Section 29‑3‑350 of the 1976 South Carolina Code requires the filing clerks to enter cancellation of all mortgages on the indexes. The amendment to Section 29‑3‑350 deletes the reference to chattel mortgages, which are now treated as security agreements under the UCC. This section will continue to apply to real estate mortgages. Section 36‑9‑404(2) will govern the termination of record notice of a security interest in personalty.

6. Section 29‑3‑360 of the 1976 South Carolina Code sets out a procedure for a rule to show cause why satisfaction should not be entered on a recorded mortgage. The amendment to Section 29‑3‑360 limits this remedy to real estate mortgages leaving to Section 36‑9‑404(1) the sanctions for the failure of the secured party of record to issue a termination statement after demand following payment of the debt.

7. Section 29‑3‑390 of the 1976 South Carolina Code sets out an alternative procedure for issuing a rule to show cause why satisfaction should not be entered of record. Since the remedy of Section 36‑9‑404(1) for failure to issue a termination statement covering a satisfied personal property security interest is exclusive, the amendment to this Section 29‑3‑390 leaves it applicable only to real property mortgages.

8. Section 29‑3‑400 of the 1976 South Carolina Code requires the clerk to file lis pendens notice upon the filing of the petition for a show cause order for satisfaction of a mortgage. Since the remedy in Section 36‑9‑404(1) with respect to a security interest in personalty is exclusive, the reference to personal property in the lis pendens statute is deleted.

9. Section 29‑3‑470 of the 1976 South Carolina Code requires a formal probate for the release of collateral. As far as personalty is concerned, releases are governed by Section 36‑9‑406. Section 29‑3‑470 is therefore amended to restrict its application to real property.

10. Sections 30‑5‑30, et seq. of the 1976 South Carolina Code set out the requirements for recording of various instruments. These sections were enacted prior to the adoption of the UCC or the title provisions relating to automobiles (Sections 56‑19‑10, et seq. of the 1976 South Carolina Code) and watercraft (Sections 50‑23‑10, et seq. of the 1976 South Carolina Code). The recording requirements of these latter statutes are different from the recording requirements of more traditional instruments such as mortgages and deeds. Section 30‑5‑30 of the 1976 South Carolina Code and other similar statutes are amended to eliminate this overlap and inconsistency. Section 30‑5‑30 specifically deals with acknowledgement or probate requirements for recorded instruments. One of the fundamental purposes of the UCC is to simplify the law governing commercial transactions by removing formal or technical requirements which no longer serve any useful purpose and may operate to penalize a person who inadvertently fails to comply with the statutory niceties. The requirement of an acknowledgement or probate as a prerequisite to the recording of an instrument under Section 30‑5‑30 of the 1976 South Carolina Code is the type of requirement which the UCC abandons “in the interest of a simplified and workable filing system”. See Official Comment 3 to Section 36‑9‑402 of the 1988 UCC Amendments.

11. Section 30‑7‑10 of the 1976 South Carolina Code is the general recording statute applicable to both real and personal property. Since Article 9 of the Uniform Commercial Code generally governs personal property security transactions, the amendments to Section 30‑7‑10 are designed to eliminate any reference to recording of security interests in personal property thereby avoiding any inconsistency with Article 9. The last paragraph of Section 30‑7‑10 grants a five‑day grace period for the filing of a security interest in certain chattels as against the lien of a landlord for rent on the same collateral. While this provision may not be technically inconsistent with any of the provisions of the Uniform Commercial Code, it along with Sections 27‑39‑50 and 27‑39‑260, which also deal with landlords’ liens, are deleted and/or repealed as being obsolete. See also Section 9(A)(2) and (A)(3) of this act.

12. Where a lien interest of any kind is assigned, released, satisfied, subordinated, etc., Section 30‑7‑60 of the 1976 South Carolina Code protects a subsequent purchaser of the collateral or creditor of the debtor from the claims of the assignee unless the assignment is recorded. Recording of the assignment will, however, subject such purchaser or creditor to the claims of the assignee. So far as these rules apply to a security interest governed by Article 9 of the Uniform Commercial Code, there is an overlap and some inconsistency. Section 36‑9‑302(2) provides that the perfection of a security interest continues to be effective as against creditors of the purchasers from the original creditor even after assignment by the secured party. Also, Section 36‑9‑405 sets up a permissive procedure by which the assignment of a security interest may be noted of record and thus inquiries concerning the transaction will be addressed to the assignee. Therefore, Section 30‑7‑60 is revised to make it clear it does not apply to security interests covered by Article 9 of the UCC. As amended this statute will continue to be applicable to liens created by other statutes such as landlords’ and laborers’ liens and all lien interests in real property, since these are not governed by the UCC.

13. Section 30‑7‑70 has been amended in order to provide for the filing and indexing of landlord, laborers, and other infrequent and miscellaneous liens that are currently filed in the chattel mortgage books which under the provisions of this act will no longer be utilized. The former provisions of Section 30‑7‑70 set forth the requirements for assignments, satisfactions, etc., of various miscellaneous liens that have been indexed in the chattel mortgage books. The creation of a new Miscellaneous Lien Filing Book pursuant to the revised provisions of Section 30‑7‑70 make its former provisions obsolete.

14. Section 30‑7‑80 of the 1976 South Carolina Code prescribes the method of recordation of assignments, satisfactions, releases, etc., of security interests. The amendment to this section excludes any security interests in personal property which are governed by Article 9 of the UCC (see especially Section 36‑9‑405), and assignments, etc., covered by the motor vehicle (Sections 56‑19‑10, et seq. of the 1976 South Carolina Code) and watercraft (Sections 50‑23‑10, et seq. of the 1976 South Carolina Code) title statutes.

15. Section 30‑9‑30 of the 1976 South Carolina Code sets forth the general requirements for filing and indexing of locally recorded documents. The amendments to this section are designed to avoid any possible conflict with the filing and indexing provisions of Article 9 of the Uniform Commercial Code. See especially Section 36‑9‑403(4).

16. Section 30‑9‑40 of the 1976 South Carolina Code, providing for the indexing of instruments filed for record, refers to Section 30‑7‑10 of the 1976 South Carolina Code, the general recording statute, as to the types of instruments covered by this section. Section 30‑7‑10 of the 1976 South Carolina Code has been amended to exclude from its coverage an instrument conveying a security interest in personalty, since such instruments would be governed by the UCC (see paragraph 11 above). It is therefore necessary to expressly include reference to Article 9 of the UCC in this section so that the indexing provisions of Section 30‑9‑40 will be consistent with those in Section 30‑7‑10 and the UCC.

17. Section 30‑11‑20 which contains special filing rules for obtaining perfected liens against railroad property has been amended to delete any reference to personal property as security interests against personal property of railroads will be covered by the transmitting utility provisions of the 1988 UCC Amendments. See Sections 9‑401(5) and 9‑403(b) and the South Carolina Reporter’s Notes to Sections 36‑9‑302, 36‑9‑402, and 36‑9‑403 of the 1988 UCC Amendments.

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 89, 91.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 192, 194.

**SECTION 30‑11‑30.** Proof of execution of written instruments.

 Before any such deed, lease, mortgage or other instrument in writing can be filed by the Secretary of State, the execution thereof shall first be proved by the affidavit in writing of a subscribing witness to such instrument, in the same manner prescribed for the probate of deeds in relation to the recording of deeds in the office of the register of deeds of the several counties of this State.

HISTORY: 1962 Code Section 60‑253; 1952 Code Section 60‑253; 1942 Code Section 3107; 1932 Code Section 3107; Civ. C. ‘22 Section 790; Civ. C. ‘12 Section 706; Civ. C. ‘02 Section 635; 1920 (31) 989.

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

Records 6.

Westlaw Topic No. 326.

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

**SECTION 30‑11‑40.** Filing and fee for filing written instruments.

 Such conveyances, leases, mortgages and other instruments in writing shall be filed by the Secretary of State in his office and for such filing he shall receive from the person offering such papers for file the sum of five dollars.

HISTORY: 1962 Code Section 60‑254; 1952 Code Section 60‑254; 1942 Code Section 3108; 1932 Code Section 3108; Civ. C. ‘22 Section 791; Civ. C. ‘12 Section 707; Civ. C. ‘02 Section 636; 1920 (31) 989.

CROSS REFERENCES

Production, when fraud is alleged, of instruments required to be recorded, see Sections 19‑5‑60 and 19‑5‑70.

Library References

Records 7.

Registers of Deeds 3.

Westlaw Topic Nos. 326, 330.

C.J.S. Records Sections 4 to 8.

C.J.S. Registers of Deeds Sections 16 to 17.

**SECTION 30‑11‑50.** Effect of certified copy of recorded instrument.

 A certificate or certified copy of any of the aforesaid papers when once filed, as hereinabove provided, by the Secretary of State, shall be competent evidence of such filing and of the facts contained in each deed, lease, mortgage or other instrument in writing so filed and certified in all the courts of this State.

HISTORY: 1962 Code Section 60‑255; 1952 Code Section 60‑255; 1942 Code Section 3108; 1932 Code Section 3108; Civ. C. ‘22 Section 791; Civ. C. ‘12 Section 707; Civ. C. ‘02 Section 636; 1920 (31) 989.

Library References

Records 15.

Westlaw Topic No. 326.

C.J.S. Records Sections 61, 66, 69, 95.

**SECTION 30‑11‑60.** Satisfaction of mortgage.

 When any such mortgage so filed shall be fully satisfied, the mortgagee shall note such satisfaction on the margin of the copy on file or declare the mortgage to be satisfied in a separate instrument in writing to be filed as provided in Section 30‑11‑40 under a penalty of five hundred dollars to be recovered in any court of competent jurisdiction at the suit of the mortgagor, his assignees or any other party aggrieved thereby.

HISTORY: 1962 Code Section 60‑255.1; 1952 Code Section 60‑255.1; 1942 Code Section 3108; 1932 Code Section 3108; Civ. C. ‘22 Section 791; Civ. C. ‘12 Section 707; Civ. C. ‘02 Section 636; 1920 (31) 989.

Library References

Mortgages 314.

Westlaw Topic No. 266.

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

**SECTION 30‑11‑70.** Validation of recordation of certain instruments.

 The act entitled “An Act to Amend Sections 705, 706 and 707 of the Code of 1912, Volume I, by substituting the words ‘filed in duplicate’ wherever the word ‘recorded’ occurs,” approved March 10 1920 shall not affect or apply to deeds of conveyance of railroad beds, tracks and rights of way, cars, locomotive engines, rolling stock and other railway equipment, leases and mortgages or other conditional sale of, or other instruments in writing relating to, such property which were duly recorded pursuant to the law as it existed prior to March 10, 1920 and the records thereof are hereby declared to be legal and valid according to the terms of the law existing when such recordations were made.

HISTORY: 1962 Code Section 60‑256; 1952 Code Section 60‑256; 1942 Code Section 3109; 1932 Code Section 3109; Civ. C. ‘22 Section 792; 1921 (32) 62.